NUISANCE (VOLUME 78 (2010) 5TH EDITION)

1. SCOPE OF NUISANCE

(1) DESCRIPTION AND CLASSIFICATION

(i) Public, Private and Statutory Nuisances

101. Meaning of 'nuisance'.

The term 'nuisance' as used in law is not capable of exact definition[1]. Although most nuisances arise from a long continuing condition, a single isolated happening is sufficient if it arises from a continuing condition on land in the control of the defendant[2].

Nuisances may be broadly divided into: (1) acts not warranted by law or omissions to discharge a legal duty, which obstruct or cause inconvenience or damage to the public in the exercise of rights common to all the Queen's subjects[3]; (2) acts or omissions which have been designated or treated by statute as nuisances[4]; and (3) acts or omissions generally connected with the user or occupation of land which cause damage to another person in connection with that other's user of land or interference with the enjoyment of land or of some right[5] connected with the land[6].

1 *Bamford v Turnley* (1862) 3 B & S 66 at 79, Ex Ch.

2 *British Celanese Ltd v AH Hunt (Capacitors) Ltd* [1969] 2 All ER 1252, [1969] 1 WLR 959, where metal foil stored on the defendants' premises and blowing from it so as to damage an electric cable was held to be a nuisance. This case was distinguished in *SCM (UK) Ltd v WJ Whittall & Son Ltd* [1970] 2 All ER 417 at 430, [1970] 1 WLR 1017 at 1031 per Thesiger J, who held that one negligent act causing damage to an electric cable was not a nuisance; on appeal [1971] 1 QB 337, [1970] 3 All ER 245, CA.

3 Stephen's Digest of Criminal Law (9th Edn) 179. These are public nuisances. For examples see PARA 105.

4 As to statutory nuisances see PARAS 115, 155-172, 199-212, 225-226.

5 Ie a right of property such as an easement or profit à prendre (see **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARAS 1, 254) or natural rights in relation to water (see **WATER AND WATERWAYS** vol 100 (2009) PARA 63 et seq).

6 Ie private nuisances: see PARA 107.

102. Nuisance, negligence and trespass distinguished.

Some varieties of nuisance closely resemble acts classed under the head of trespass[1]. The distinction between the two is that in trespass the immediate act which constitutes the wrong causes an injury to the sufferer's person or damage to his property or amounts to dispossession, whereas in nuisance the act itself often does not directly affect the person or property of another, but has consequences which become or are prejudicial to his person or property[2]. Nuisance must also be distinguished from negligence although many acts which constitute a nuisance involve an element of negligence and may also be actionable as such[3].

1 See *Nicholls v Ely Beet Sugar Factory* [1931] 2 Ch 84; *Nicholls v Ely Beet Sugar Factory Ltd* [1936] Ch 343, CA.

2 *Reynolds v Clark* (1725) 1 Stra 634; *Weeton v Woodcock* (1839) 5 M & W 587 at 594; *Haward v Bankes* (1760) 2 Burr 1114; *Kine v Jolly* [1905] 1 Ch 480 at 487-488, CA, per Vaughan Williams LJ; see also *Scott v Shepherd* (1773) 2 Wm Bl 892; *Esso Petroleum Co Ltd v Southport Corpn* [1956] AC 218, [1955] 3 All ER 864, HL; *Home Brewery Co Ltd v William Davis & Co (Leicester) Ltd* [1987] QB 339, sub nom *Home Brewery Co Ltd v William Davis & Co (Loughborough) plc* [1987] 1 All ER 637. The following acts have been held to be trespass: the actual pouring of water onto a neighbour's land (*Preston v Mercer* (1656) Hard 60, as explained in *Reynolds v Clark*); injuring a person on the highway by throwing logs at him (*Reynolds v Clark*). On the other hand the following acts were held or considered to be nuisance and not trespass: overburdening a floor so that it fell and damaged the goods of another in the cellar beneath (*Edwards v Halinder* (1594) Poph 46); diverting the water of a river by digging trenches in the defendant's own ground (*Leveridge v Hoskins* (1709) 11 Mod Rep 257); fixing a spout to the defendant's house causing water to be poured onto the plaintiff's land (*Reynolds v Clark*); so working a mine as to cause water to flow through other mines into those of the plaintiff (*Haward v Bankes*); leaving logs in the highway to the personal injury of another (*Reynolds v Clark* at 635 per Fortescue J).

3 See **NEGLIGENCE** vol 78 (2010) PARA 1.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(1) DESCRIPTION AND CLASSIFICATION/(i) Public, Private and Statutory Nuisances/103. Nuisance in covenants.

103. Nuisance in covenants.

The word 'nuisance', when used in a covenant between a lessee and a lessor, should perhaps be construed prima facie in the same sense as in the general law of nuisance, but a covenant against committing acts of nuisance is commonly joined with a prohibition against doing other acts such as causing annoyance and inconvenience, and this will extend the scope of the obligation[1].

1 See generally **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 500.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(1) DESCRIPTION AND CLASSIFICATION/(i) Public, Private and Statutory Nuisances/104. Common law and statutory nuisances.

104. Common law and statutory nuisances.

Nuisances are divisible into common law and statutory nuisances. A common law nuisance is one which, apart from statute, violates the principles which the common law lays down for the protection of the public and of individuals in the exercise and enjoyment of their rights. A statutory nuisance is one which, whether or not it constitutes a nuisance at common law[1], is made a nuisance by statute either in express terms or by implication[2].

1 In order to constitute a statutory nuisance under the Environmental Protection Act 1990, the matter complained of may be either a nuisance or prejudicial to health: see the Environmental Protection Act 1990 s 79; and PARA 115. Thus something may be a statutory nuisance on the ground of prejudice to health, although it is not a nuisance in the common law sense. It has been suggested that even something falling within the 'nuisance' head of statutory nuisance must come within the spirit of the Act: see *Coventry City Council v Cartwright* [1975] 2 All ER 99, [1975] 1 WLR 845, DC, which was decided under identical wording in the Public Health Act 1936 s 92(1)(c) (repealed). If this is so, the use of the same wording in the wider context of environmental protection may lead to a broader interpretation of 'nuisance' than in the former context of public health.

2 See eg the Environmental Protection Act 1990 s 79; and PARA 115. See also PARA 154 et seq; **WATER AND WATERWAYS** vol 101 (2009) PARA 672.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(1) DESCRIPTION AND CLASSIFICATION/(i) Public, Private and Statutory Nuisances/105. Public nuisance.

105. Public nuisance.

Nuisances may be divided into those which are public and those which are private. A public nuisance is one which inflicts damage, injury or inconvenience on all the Queen's subjects or on all members of a class who come within the sphere or neighbourhood of its operation. It may, however, affect some to a greater extent than others[1]. The question whether the number of persons affected is sufficient to constitute a class is one of fact[2]. The character of the neighbourhood is relevant to determination of the question whether a particular activity constitutes a public nuisance, and it has been held that the grant of planning permission for a change of use may therefore have the effect of rendering lawful an activity which would have been actionable if carried out in an earlier period before the character of the neighbourhood had changed[3]. There is no requirement that an activity must in itself be unlawful to constitute a public nuisance, and disturbance caused by lawful use of the highway may constitute such a nuisance in an appropriate case[4].

1 *Soltau v De Held* (1851) 2 Sim NS 133 at 142. Where a noise caused by a tinman plying his trade affected three houses only, it was held that this was a private nuisance and not a public one: *R v Lloyd* (1802) 4 Esp 200. Whether the overheating of a church so as to be injurious to health was a public nuisance was doubted, but not decided, in *Woodman v Robinson* (1852) 2 Sim NS 204.

2 See *A-G (on the relation of Glamorgan County Council and Pontardawe RDC) v PYA Quarries Ltd* [1957] 2 QB 169 at 184, [1957] 1 All ER 894 at 902, CA, per Romer LJ. A public nuisance is a nuisance which is so widespread in its range or so indiscriminate in its effect that it would not be reasonable to expect one person to take proceedings on his own responsibility to put a stop to it, but that proceedings should be taken on the responsibility of the community at large: *A-G (on the relation of Glamorgan County Council and Pontardawe RDC) v PYA Quarries Ltd* at 191 and at 908 per Denning LJ.

3 *Gillingham Borough Council v Medway (Chatham) Dock Co Ltd* [1993] QB 343, [1992] 3 All ER 923. See also *Allen v Gulf Oil Refining Ltd* [1980] QB 156 at 174, [1979] 3 All ER 1008 at 1020, CA, per Cumming-Bruce LJ (revsd on other grounds [1981] AC 1001, [1981] 3 All ER 353, HL). But the general principle is that private rights are unaffected by the grant of planning permission, so that even if the principle laid down in *Gillingham Borough Council v Medway (Chatham) Dock Co Ltd* is correct it is very limited in scope and can have no application if there is no change in the character of the neighbourhood: *Wheeler v JJ Saunders Ltd* [1996] Ch 19, [1995] 2 All ER 697, CA. See also *Hunter v Canary Wharf Ltd* [1997] AC 655, [1997] 2 All ER 426, HL; *Watson v Croft Promosport Ltd* [2009] EWCA Civ 15, [2009] 3 All ER 249.

4 *Gillingham Borough Council v Medway (Chatham) Dock Co Ltd* [1993] QB 343 at 358, [1992] 3 All ER 923 at 933 per Buckley J; see also *Halsey v Esso Petroleum Co Ltd* [1961] 2 All ER 145, [1961] 1 WLR 683.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(1) DESCRIPTION AND CLASSIFICATION/(i) Public, Private and Statutory Nuisances/106. Criminal liability for public nuisance.

106. Criminal liability for public nuisance.

There are statutory provisions[1] which impose penalties for nuisances affecting public health and comfort. However, the common law liability remains, and any person who by any act unwarranted by law or by any omission to carry out a legal duty endangers the life, health, property, morals or comfort of the public commits an offence known as public nuisance[2]. A landowner may be criminally liable for public nuisance if he should have known of the likely consequences of activities taking place on his land, even if he had no actual knowledge[3].

1 See the Environmental Protection Act 1990 ss 79-82; and PARAS 115, 155-172, 199-212, 225-226.

2 The common law offence is compatible with the legal certainty requirements of the common law and the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), but the circumstances in which there should be resort to the common law offence are now rare in view of the existing statutory provisions: *R v Goldstein; R v Rimmington* [2005] UKHL 63, [2006] 1 AC 459, [2006] 2 All ER 257. Examples are the keeping of a corpse unburied (*R v Vann* (1851) 2 Den 325 at 331, CCR), provided the person charged has the means for paying for its burial (see **CREMATION AND BURIAL** vol 10 (Reissue) PARA 904); the exposure in a public place of a person infected with smallpox (*R v Vantandillo* (1815) 4 M & S 73), although it would be a defence to an indictment if it could be shown that there was lawful and sufficient excuse for so doing (*R v Burnett* (1815) 4 M & S 272; and see *Metropolitan Asylum District Managers v Hill* (1881) 6 App Cas 193 at 204, HL, per Lord Blackburn; *A-G v Nottingham Corpn* [1904] 1 Ch 673); the keeping of explosives or highly inflammable matter in a manner calculated to terrify the neighbourhood or to do damage to neighbouring property (*R v Lister and Biggs* (1857) Dears & B 209, CCR; *R v Taylor* (1742) 2 Stra 1167; *R v Bennett* (1858) Bell CC 1; and see **EXPLOSIVES** vol 17(2) (Reissue) PARA 901; for statutes now regulating the keeping of explosives see **EXPLOSIVES** vol 17(2) (Reissue) PARA 924 et seq); going about a public street armed so as to terrify the public (*R v Meade* (1903) 19 TLR 540); making obscene telephone calls on many occasions to numerous women (*R v Johnson* [1997] 1 WLR 367, CA; cf *R v Ireland* [1998] AC 147, [1997] 4 All ER 225, HL, where there was a series of silent telephone calls to three women, this was held to constitute assault). The actual, not potential, danger to the public must be considered, so that a hoax telephone call about the planting of a bomb was held not to be a public nuisance: *R v Madden* [1975] 3 All ER 155, [1975] 1 WLR 1379, CA; cf *R v Soul* (1980) 70 Cr App Rep 295, CA. As to criminal liability for bomb hoaxes see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 853. As to the common law and statutory liability for selling unwholesome food see **FOOD** vol 18(2) (Reissue) PARAS 220-221.

3 *R v Shorrock* [1994] QB 279, [1993] 3 All ER 917, CA. As to where an injunction restraining public or private nuisance may exceptionally be granted in aid of the criminal law see *City of London Corpn v Bovis Construction Ltd* [1992] 3 All ER 697, 49 BLR 1, CA; and PARAS 188 note 2, 231 note 3. See also **CIVIL PROCEDURE** vol 11(1) (2009) PARA 331 et seq.

UPDATE

106 Criminal liability for public nuisance

NOTE 2--A single act by a male on foot soliciting a woman for prostitution within a recognised vice area does not amount to the common law offence of public nuisance: *DPP v Fearon* [2010] EWHC 340 (Admin), (2010) 174 JP 145, DC.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(1) DESCRIPTION AND CLASSIFICATION/(i) Public, Private and Statutory Nuisances/107. Private nuisance.

107. Private nuisance.

A private nuisance is one which interferes with a person's use or enjoyment of land or of some right[1] connected with land[2]. It is thus a violation of a person's private rights as opposed to a violation of rights which he enjoys in common with all members of the public. The ground of the responsibility is ordinarily the possession and control of land from which the nuisance proceeds[3]; but the original creator of a nuisance remains liable even if he no longer has occupation or control[4].

1 Eg an easement: see **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 144.

2 See 3 Bl Com (14th Edn) 216; *R v Lloyd* (1802) 4 Esp 200; *A-G v Sheffield Gas Consumers Co* (1853) 3 De GM & G 304 at 320; *Smith v Jaffray* (1886) 2 TLR 480 at 482, DC; *Malone v Laskey* [1907] 2 KB 141, CA (overruled, but without affecting this point, by *AC Billings & Sons Ltd v Riden* [1958] AC 240, [1957] 3 All ER 1, HL); *Cunard v Antifyre Ltd* [1933] 1 KB 551 at 556-557, DC, per Talbot J; *Nicholls v Ely Beet Sugar Factory Ltd* [1936] Ch 343 at 348, CA, per Lord Wright MR; *Sedleigh-Denfield v O'Callaghan* [1940] AC 880 at 903, [1940] 3 All ER 349 at 364, HL, per Lord Wright; *Southport Corpn v Esso Petroleum Co Ltd* [1954] 2 QB 182 at 196, [1954] 2 All ER 561 at 579, CA, per Denning LJ. See also *Heaven v Mortimore* (1967) 202 Estates Gazette 615 (on appeal (1968) 205 Estates Gazette 767, CA); *Hunter v Canary Wharf Ltd* [1997] AC 655, [1997] 2 All ER 426, HL. Cf *Crown River Cruises Ltd v Kimbolton Fireworks Ltd* [1996] 2 Lloyd's Rep 533.

3 Interference with adjoining land by someone using the highway may be a private nuisance: *Hubbard v Pitt* [1976] QB 142 at 189, [1975] 3 All ER 1 at 19, CA, per Orr LJ. Several dicta lend support to the view that an action for private nuisance may be maintained for an interference which is unconnected with any use of land by the defendant: see eg *Sedleigh Denfield v O'Callaghan* [1940] AC 880 at 903, [1940] 3 All ER 349 at 364, HL, per Lord Wright; *Cunard v Antifyre Ltd* [1933] 1 KB 551 at 557, DC, per Talbot J. See also *Esso Petroleum Co Ltd v Southport Corpn* [1956] AC 218 at 224-225, sub nom *Southport Corpn v Esso Petroleum Co Ltd* [1953] 2 All ER 1204 at 1207-1208 per Devlin J; but cf on appeal sub nom *Southport Corpn v Esso Petroleum Co Ltd* [1954] 2 QB 182 at 196, [1954] 2 All ER 561 at 570, CA, per Denning LJ (affd sub nom *Esso Petroleum Co Ltd v Southport Corpn* [1956] AC 218 at 242, [1955] 3 All ER 864 at 871, HL, per Lord Radcliffe). In the Court of Appeal, Denning LJ cited the statement by Lord Wright in *Sedleigh-Denfield v O'Callaghan* at 903 and at 364, without including the possibility of the exceptions mentioned by Lord Wright.

In Australia a trespasser is not liable in private nuisance: *Beaudesert Shire Council v Smith* [1966] ALR 1175, Aust HC. For the contrary view see *Esso Petroleum Co Ltd v Southport Corpn* [1956] AC 218 at 224, sub nom *Southport Corpn v Esso Petroleum Co Ltd* [1953] 2 All ER 1204 at 1207 per Devlin J.

4 See PARA 182.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(1) DESCRIPTION AND CLASSIFICATION/(i) Public, Private and Statutory Nuisances/108. Distinctions between remedies and defences for public and private nuisance.

108. Distinctions between remedies and defences for public and private nuisance.

The importance of the division of nuisances into public and private lies partly in the difference of the remedies and defences applicable to each[1], and partly in the fact that a private individual has no right of action in respect of a public nuisance unless he can show that he has sustained some special damage over and above that inflicted on the community at large[2].

Whereas a private nuisance may be justified on the ground that the right to commit it has been acquired by prescription[3], no amount of time will afford a like defence to an allegation of a public nuisance[4]. Moreover, the Crown cannot grant to a person a right to commit a public nuisance[5].

1 As to defences see PARAS 192-198; and as to remedies see PARAS 213-236.

2 See PARAS 187-191.

3 See **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARAS 74-111.

4 See PARA 193.

5 See PARA 192.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(1) DESCRIPTION AND CLASSIFICATION/(ii) Essentials of Common Law Nuisance/109. Damage alone does not necessarily constitute a nuisance.

(ii) Essentials of Common Law Nuisance

109. Damage alone does not necessarily constitute a nuisance.

Damage alone, whether actual or presumed[1], gives no right of action; the mere fact that an act causes loss to another does not make that act a nuisance[2]. There must also be an act or omission which interferes with a person's use or enjoyment of land or some right over or in connection with land, commonly referred to as an 'unlawful act'[3], although the activity complained of need not necessarily be unlawful of itself and whether or not it constitutes a nuisance depends on the circumstances[4].

1 As to the presumption of damage see PARA 113.

2 *Harrison v Good* (1871) LR 11 Eq 338; *Fishmongers' Co v East India Co* (1752) 1 Dick 163. Examples of damage not constituting nuisance are the establishment of a school in competition with an existing one (*Gloucester Grammar School Case* (1410) YB 11 Hen 4, fo 47, pl 21; cited in *Keeble v Hickeringill* (1706) 11 East 574 at 576); the noise of music lessons and practice in a neighbouring house (*Christie v Davey* [1893] 1 Ch 316); the establishment of a large school near a residence (*Harrison v Good*); the occasional discomfort caused by a neighbour burning his weeds, emptying cesspools or repairing his house (*Bamford v Turnley* (1862) 3 B & S 66 at 83, Ex Ch); the setting up of a decoy for ducks which attracts the birds from another's decoy (*Keeble v Hickeringill*); the diversion of water flowing by undefined channels through the defendant's land (*Bradford Corpn v Pickles* [1895] AC 587, HL); the building of a bridge over a river to the detriment of the trade of a ferry (*Hopkins v Great Northern Rly Co* (1877) 2 QBD 224, CA; *Dibden v Skirrow* [1908] 1 Ch 41, CA); and the interference with a view (see PARA 128).

3 See PARA 101.

4 See eg *Halsey v Esso Petroleum Co Ltd* [1961] 2 All ER 145, [1961] 1 WLR 683; and PARA 110.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(1) DESCRIPTION AND CLASSIFICATION/(ii) Essentials of Common Law Nuisance/110. Surrounding circumstances must be considered.

110. Surrounding circumstances must be considered.

An act which in some circumstances does not constitute a nuisance may in others become actionable as such. Whether such an act does constitute a nuisance must be determined not merely by an abstract consideration of the act itself but by reference to all the circumstances of the particular case[1], including, for example, the time of commission of the act complained of, the place of its commission, the manner of committing it, that is, whether it is done wantonly or in the reasonable exercise of rights, and the effects of its commission, that is, whether those effects are transitory or permanent, occasional or continuous[2]. Thus the question of nuisance or no nuisance is one of fact[3].

1 *Allen v Gulf Oil Refining Ltd* [1980] QB 156 at 179, [1979] 3 All ER 1008 at 1018, CA, per Cumming-Bruce LJ (revsd on other grounds [1981] AC 1001, [1981] 1 All ER 353, HL); *Sturges v Bridgman* (1879) 11 ChD 852 at 865, CA; *Clarke v Clark* (1865) 1 Ch App 16; *Luscombe v Steer* (1867) 17 LT 229; *Gaunt v Fynney* (1872) 8 Ch App 8; *Broder v Saillard* (1876) 2 ChD 692; *Christie v Davey* [1893] 1 Ch 316; *Colls v Home and Colonial Stores Ltd* [1904] AC 179 at 185, HL; *Rushmer v Polsue and Alfieri Ltd* [1906] 1 Ch 234, CA (affd sub nom *Polsue and Alfieri Ltd v Rushmer* [1907] AC 121, HL); *Hollywood Silver Fox Farm Ltd v Emmett* [1936] 2 KB 468, [1936] 1 All ER 825. See also *Bolton v Stone* [1951] AC 850, [1951] 1 All ER 1078, HL; and note 3.

2 *Bamford v Turnley* (1862) 3 B & S 66 at 79, Ex Ch; *A-G v Sheffield Gas Consumers Co* (1853) 3 De GM & G 304 at 339; *Scott v Firth* (1864) 4 F & F 349; *St Helen's Smelting Co v Tipping* (1865) 11 HL Cas 642; *Brand v Hammersmith and City Rly Co* (1867) LR 2 QB 223 at 246, Ex Ch; *Hollywood Silver Fox Farm Ltd v Emmett* [1936] 2 KB 468, [1936] 1 All ER 825; *Crown River Cruises Ltd v Kimbolton Fireworks Ltd* [1996] 2 Lloyd's Rep 533. See also *Ogston v Aberdeen District Tramways Co* [1897] AC 111, HL; cf *City of Montreal v Montreal Street Rly Co* [1903] AC 482, PC; and see *Bolton v Stone* [1951] AC 850, [1951] 1 All ER 1078, HL; and note 3.

3 *R v Tindall* (1837) 6 Ad & El 143; *R v Betts* (1850) 16 QB 1022; *R v Train* (1862) 2 B & S 640 at 646; *Crump v Lambert* (1867) LR 3 Eq 409 at 413; *R v Burt* (1870) 11 Cox CC 399; *Fleming v Hislop* (1886) 11 App Cas 686, HL; *Bantwick v Rogers* (1891) 7 TLR 542. The text to this paragraph was cited with approval in *Stone v Bolton* [1949] 1 All ER 237 at 238-239 per Oliver J; approved (as to nuisance) [1950] 1 KB 201, [1949] 2 All ER 851, CA, and (on other grounds) sub nom *Bolton v Stone* [1951] AC 850, [1951] 1 All ER 1078, HL.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(1) DESCRIPTION AND CLASSIFICATION/(ii) Essentials of Common Law Nuisance/111. Effect of malice.

111. Effect of malice.

An act which is otherwise lawful, and which a person has a right to perform in the ordinary enjoyment of his property and rights, does not constitute a nuisance merely because the doer is actuated by motives of malice[1]; but in some cases a malicious motive may make the defendant's act unreasonable and therefore actionable as a nuisance[2].

1 *Bradford Corpn v Pickles* [1895] AC 587, HL; *Allen v Flood* [1898] AC 1, HL; *Quinn v Leathem* [1901] AC 495, HL.

2 See *Christie v Davey* [1893] 1 Ch 316; *Hollywood Silver Fox Farm Ltd v Emmett* [1936] 2 KB 468, [1936] 1 All ER 825. See also PARA 125 note 8.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(1) DESCRIPTION AND CLASSIFICATION/(ii) Essentials of Common Law Nuisance/112. Damage essential.

112. Damage essential.

Damage, actual, prospective or presumed, is one of the essentials of nuisance. Its existence must be proved[1], except in those cases in which it is presumed by law to exist[2].

The damage need not consist of pecuniary loss[3], but it must be material or substantial[4], that is, it must not be merely sentimental, speculative or trifling[5], or merely temporary, fleeting or evanescent[6]. However, nothing can be deemed fleeting or evanescent if it results in substantial damage, and therefore regard is to be had not merely to the duration of the thing complained of but to the effect of the act or omission upon the claimant[7].

1 *R v Betts* (1850) 16 QB 1022; *A-G v Kingston-on-Thames Corpn* (1865) 34 LJ Ch 481; *Salvin v North Brancepeth Coal Co* (1874) 9 Ch App 705.

2 See PARA 113.

3 *A-G v Conduit Colliery Co* [1895] 1 QB 301, DC.

4 *R v Tindall* (1837) 6 Ad & El 143; *R v Russell* (1854) 3 E & B 942; *Scott v Firth* (1864) 4 F & F 349; *R v Leprue* (1866) 30 JP Jo 723, sub nom *R v Lepine* 15 LT 158; *Smith v Thackerah* (1866) LR 1 CP 564; (but see the comment on this case in *A-G v Conduit Colliery Co* [1895] 1 QB 301, DC); *Cooke v Forbes* (1867) LR 5 Eq 166; *Luscombe v Steer* (1867) 17 LT 229; *A-G v Gee* (1870) LR 10 Eq 131; *Kine v Jolly* [1905] 1 Ch 480 at 489, CA; *R v Bartholomew* [1908] 1 KB 554, CCR. As to what amount of damage will justify the grant of an injunction see PARA 231; and **CIVIL PROCEDURE** vol 11 (2009) PARAS 359-360.

5 See *Fleming v Hislop* (1886) 11 App Cas 686 at 690, HL, per Lord Selborne; *St Helen's Smelting Co v Tipping* (1865) 11 HL Cas 642; *Gaunt v Fynney* (1872) 8 Ch App 8; *Salvin v North Brancepeth Coal Co* (1874) 9 Ch App 705.

6 *Benjamin v Storr* (1874) LR 9 CP 400 at 407 per Brett J; and see *Taylor v Bennett* (1836) 7 C & P 329. Cf *Walker v Brewster* (1867) LR 5 Eq 25; *Inchbald v Robinson, Inchbald v Barrington* (1869) 4 Ch App 388; *R v Burt* (1870) 11 Cox CC 399; *Jones v Chappell* (1875) LR 20 Eq 539; *Harrison v Southwark and Vauxhall Water Co* [1891] 2 Ch 409; *Colwell v St Pancras Borough Council* [1904] 1 Ch 707.

7 *Fritz v Hobson* (1880) 14 ChD 542 at 556 per Fry J.

113. Presumption of damage.

Where an absolute legal right of the claimant is infringed, the law presumes damage even though no actual loss can be proved[1]. Moreover, in proceedings by the Attorney General for an injunction to restrain acts that are unauthorised by law and interfere with public rights[2] or acts contrary to a statute[3], it is not necessary to prove actual damage to the public where the acts tend to injure the public. However, an injunction is a discretionary remedy and may be withheld in a proper case in the absence of public injury, even though there have been repeated minor contraventions of a statute[4].

1 *Nicholls v Ely Beet Sugar Factory Ltd* [1936] Ch 343 at 350, CA, per Lord Wright. See also *Baten's Case* (1610) 9 Co Rep 53b; *Ashby v White* (1703) 2 Ld Raym 938; 1 Smith LC (13th Edn) 253; *Hobson v Todd* (1790) 4 Term Rep 71; *Barker v Green* (1824) 2 Bing 317; *Williams v Morland* (1824) 2 B & C 910; *Fay v Prentice* (1845) 1 CB 828; *Pryce v Belcher* (1847) 4 CB 866; *Embrey v Owen* (1851) 6 Exch 353; *Sampson v Hoddinott* (1857) 1 CBNS 590; *Earl of Norbury v Kitchin* (1866) 15 LT 501; *Bickett v Morris* (1866) LR 1 Sc & Div 47, HL; *Pennington v Brinsop Hall Coal Co* (1877) 5 ChD 769; *A-G v Conduit Colliery Co* [1895] 1 QB 301, DC; *McCartney v Londonderry and Lough Swilly Rly Co* [1904] AC 301, HL; *Price v Hilditch* [1930] 1 Ch 500.

2 *A-G v Shrewsbury (Kingsland) Bridge Co* (1882) 21 ChD 752. As to actions by the Attorney General for public nuisance see PARA 189.

3 *A-G v Cockermouth Local Board* (1874) LR 18 Eq 172; *A-G v London and North Western Rly Co* [1900] 1 QB 78, CA. As to statutory nuisances see PARAS 115, 225-226.

4 *A-G v Harris* [1960] 1 QB 31, [1959] 2 All ER 393. As to the grounds for refusing injunctions see PARA 230; and as to the granting of injunctions at the suit of the Attorney General see generally **CIVIL PROCEDURE** vol 11 (2009) PARAS 491-492.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(1) DESCRIPTION AND CLASSIFICATION/(ii) Essentials of Common Law Nuisance/114. Acts of others.

114. Acts of others.

Where the collective effect of the independent acts of others is a nuisance, the court will restrain each person contributing to the nuisance, even though the act of any one of them would result only in an inappreciable inconvenience or damage and would be insufficient in itself to constitute a nuisance in law[1]. So, where the discharge of chemicals into a sewer or stream is innocuous until they combine with other chemicals in the sewer or stream, the persons guilty of each such discharge are nevertheless severally guilty of committing a nuisance[2].

1 *Lambton v Mellish, Lambton v Cox* [1894] 3 Ch 163 (noise); *Thorpe v Brumfitt* (1873) 8 Ch App 650 at 656 (obstruction of access); *Sadler v Great Western Rly Co* [1895] 2 QB 688, CA (affd [1896] AC 450, HL); *Blair and Sumner v Deakin, Eden and Thwaites v Deakin* (1887) 52 JP 327 (pollution of stream); *Nixon v Tynemouth Union Rural Sanitary Authority* (1888) 52 JP 504, DC (pollution of stream); *Hendon Union Guardians v Bowles* (1869) 20 LT 609; *Stollmeyer v Petroleum Development Co Ltd* [1918] AC 498n, PC; *Munday v South Metropolitan Electric Light Co Ltd and New Gutta Percha Co Ltd* (1913) 29 TLR 346; *Polsue and Alfieri Ltd v Rushmer* [1907] AC 121, HL; *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1952] 1 All ER 1326 at 1333 (affd on other grounds [1953] Ch 149, [1953] 1 All ER 179, CA). A similar principle applies in the case of criminal responsibility for statutory nuisance: see the Environmental Protection Act 1990 s 81(1); and PARA 201.

2 *St Helens Chemical Co v St Helens Corpn* (1876) 1 ExD 196; *Blair and Sumner v Deakin, Eden and Thwaites v Deakin* (1887) 52 JP 327; and see *Brown v Bussell* (1868) LR 3 QB 251. See further PARA 141; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 270 et seq.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(1) DESCRIPTION AND CLASSIFICATION/(iii) Statutory Nuisances under the Environmental Protection Act 1990/115. Matters that constitute statutory nuisances.

(iii) Statutory Nuisances under the Environmental Protection Act 1990

115. Matters that constitute statutory nuisances.

For the purposes of Part III of the Environmental Protection Act 1990[1], the following matters constitute statutory nuisances[2]:

1 (1) any premises[3] in such a state as to be prejudicial to health[4] or a nuisance[5];
2 (2) smoke emitted from premises so as to be prejudicial to health or a nuisance[6];
3 (3) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance[7];
4 (4) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance[8];
5 (5) any accumulation or deposit which is prejudicial to health or a nuisance[9];
6 (6) any animal kept in such place or manner as to be prejudicial to health or a nuisance[10];
7 (7) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance[11];
8 (8) artificial light emitted from premises so as to be prejudicial to health or a nuisance[12];
9 (9) noise emitted from premises so as to be prejudicial to health or a nuisance[13];

10 (10) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street[14];
11 (11) any other matter declared by any enactment to be a statutory nuisance[15].

1 Ie the Environmental Protection Act 1990 Pt III (ss 79-84): see PARAS 155-172.

2 As to the distinction between nuisance in common law and statutory nuisance see PARA 104. As to statutory nuisance under the Environmental Protection Act 1990 see further PARAS 155-172.

3 As to the meaning of 'premises' see PARA 160.

4 As to the meaning of 'prejudicial to health' see PARA 158.

5 See the Environmental Protection Act 1990 s 79(1)(a); and PARA 164.

6 See the Environmental Protection Act 1990 s 79(1)(b); and PARA 166.

7 See the Environmental Protection Act 1990 s 79(1)(c); and PARA 167.

8 See the Environmental Protection Act 1990 s 79(1)(d); and PARA 168.

9 See the Environmental Protection Act 1990 s 79(1)(e); and PARA 169.

10 See the Environmental Protection Act 1990 s 79(1)(f); and PARA 170.

11 See the Environmental Protection Act 1990 s 79(1)(fa); and PARA 171.

12 See the Environmental Protection Act 1990 s 79(1)(fb); and PARA 172.

13 See the Environmental Protection Act 1990 s 79(1)(g); and PARA 165.

14 See the Environmental Protection Act 1990 s 79(1)(ga); and PARA 165.

15 See the Environmental Protection Act 1990 s 79(1)(h); and PARA 156.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(2) NUISANCES BETWEEN NEIGHBOURING PROPERTIES/(i) Injury to Property/116. Principles governing exercise of rights.

(2) NUISANCES BETWEEN NEIGHBOURING PROPERTIES

(i) Injury to Property

116. Principles governing exercise of rights.

Every person is required by law to exercise his rights, whether over his own or over public property, with due regard to the co-existing rights of others, and an unreasonable, excessive or extravagant exercise of his rights to the damage of others constitutes a nuisance. Thus a person is guilty of a nuisance who, in the exercise of his right of access to his premises, either on a public highway[1] or a public navigable river[2], acts so unreasonably as to have no regard to the similar rights of access possessed by his neighbours; or who, during building operations, uses one passage excessively when he might reduce the inconvenience to his neighbours by using others which are available[3]; or who uses an exceptionally heavy traction engine on the highway so as to break underground pipes[4]; or who carries out disturbing building operations during the night without any real necessity[5].

However, a shopkeeper who reasonably carries on his business is not liable in nuisance if queues collect on the highway opposite neighbouring shops not because of any act of his but because of a scarcity of what he sells[6].

In determining who should bear the costs of repairs carried out to abate a nuisance from a joint property, the court is to have regard to the benefit each party would receive from the repairs[7].

1 *Benjamin v Storr* (1874) LR 9 CP 400; *A-G v Brighton and Hove Co-operative Supply Association* [1900] 1 Ch 276, CA; and see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 327.

2 *Original Hartlepool Collieries Co v Gibb* (1877) 5 ChD 713; and see **WATER AND WATERWAYS** vol 101 (2009) PARA 688 et seq.

3 *Fritz v Hobson* (1880) 14 ChD 542; *Harper v GN Haden & Sons Ltd* [1933] Ch 298, CA (obstruction by hoarding being only temporary and reasonable in quantum and duration held not to give rise to legal remedy). See also **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 327.

4 *Chichester Corpn v Foster* [1906] 1 KB 167; and see *Gas Light and Coke Co v St Mary Abbott's, Kensington, Vestry* (1885) 15 QBD 1, CA. See also **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 325.

5 See *Beaumont v Emery* [1875] WN 106; *Webb v Barker* [1881] WN 158; *Howland v Dover Harbour Board* (1898) 14 TLR 355, CA. Cf *Clark v Lloyd's Bank Ltd* (1910) 79 LJ Ch 645; *Bamford v Turnley* (1862) 3 B & S 66, Ex Ch; *Fritz v Hobson* (1880) 14 ChD 542; *Harrison v Southwark and Vauxhall Water Co* [1891] 2 Ch 409; *Ash v Great Northern, Piccadilly and Brompton Rly Co* (1903) 19 TLR 639; *Roberts v Charing Cross, Euston and Hampstead Rly Co* (1903) 87 LT 732; *Colwell v St Pancras Borough Council* [1904] 1 Ch 707; *Gilling v Gray* (1910) 27 TLR 39; *De Keyser's Royal Hotel Ltd v Spicer Bros Ltd and Minter* (1914) 30 TLR 257 (pile-driving at night). See also PARA 125.

6 *Dwyer v Mansfield* [1946] KB 437, [1946] 2 All ER 247. As to nuisances to highways by causing the collection of crowds through the creation of attractions on adjoining land see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 330.

7 *Abbahall Ltd v Smee* [2002] EWCA Civ 1831, [2003] 1 All ER 465, [2003] 1 WLR 1472.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(2) NUISANCES BETWEEN NEIGHBOURING PROPERTIES/(i) Injury to Property/117. When actionable and when justifiable.

117. When actionable and when justifiable.

Where a person does some act which he is lawfully entitled to do on his own land it will constitute a nuisance if it causes physical damage to his neighbour's property, unless there is justification. Possible justifications are that the damage is a natural result of a reasonable use by a person of his own property[1], or that the act was done under statutory authority and that every reasonable precaution was taken to prevent it causing damage[2], or that the act was done under agreement, expressed or implied, between the doer and the person affected[3], or that the damage was due to some act or default of the person affected[4], or to an act of God[5], or that the damage was caused by the act of a stranger without the actual or constructive knowledge of the occupier of the land[6], or that the act is justified by some right such as an easement or by prescriptive right[7].

Instances of injury to property or interference with rights in respect of property[8] are commonly found to arise from excavations causing subsidence[9], from vibration and noise in the execution of works[10], from the escape of water or noxious fumes[11] or animals[12], from the use of property for dangerous purposes[13], from interference with light or air[14] or rights of access[15] or rights of way[16], or from an excessive or extravagant exercise of rights[17].

1 See PARA 118.

2 See PARA 192.

3 As to the effect of consent on the rule in *Rylands v Fletcher* (1868) LR 3 HL 330 see PARA 153.

4 As to the effect of the default of the claimant on the rule in *Rylands v Fletcher* (1868) LR 3 HL 330 see PARA 152.

5 See *Nichols v Marsland* (1876) 2 Ex D 1, CA; and PARA 152.

6 See *Barker v Herbert* [1911] 2 KB 633, CA; and PARA 152.

7 See PARA 193. As to an easement founding a defence to a nuisance action see *Gardner v Davis* [1999] EHLR 13, [1998] 29 LS Gaz R 28, CA; and **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARAS 22, 34.

8 As to interference with easements generally see **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 144 et seq.

9 In what category the action for damage by subsidence falls is not wholly clear: see further **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 184.

10 See *Shelfer v City of London Electric Lighting Co, Meux's Brewery Co v City of London Electric Lighting Co* [1895] 1 Ch 287, CA; *Dexter v Aldershot UDC* (1915) 79 JP Jo 580 (noise and vibration from electrical power station).

11 See PARAS 123, 150-151.

12 See PARA 140.

13 See PARA 147 et seq.

14 See **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 222 et seq.

15 See **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 229.

16 See **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 156.

17 See PARAS 116, 120. Cf *Wallace v M'Cartan* [1917] 1 IR 377 (connecting drain with sewer).

118. Ordinary user of property.

Owners or occupiers of land are legally entitled to use or occupy their land for any purpose for which in the ordinary and natural course of the enjoyment of land it may be used or occupied, and are not responsible for damage sustained by the property of others through natural agencies operating as a consequence of such ordinary and natural user or occupation[1]. However, where the roots, branches or leaves of trees or shrubs[2] encroach upon the land of an adjoining owner and there cause damage to either his property or his cattle, an action for nuisance will lie irrespective of whether the trees were planted or self-sown[3]. A landowner who demolishes his own property, exposing that of his neighbour to the weather, will owe a duty of care under the law of negligence to take reasonable steps to provide substitute weather protection[4].

Each of the respective owners or occupiers of adjoining or neighbouring buildings or premises is entitled to the full use and enjoyment of his property in the ordinary manner of its use and for the ordinary purposes for which premises are designed, and, so long as he confines himself

to such user and exercises such user and enjoyment in a reasonable manner, having regard to surrounding circumstances, he does not commit a nuisance[5].

An owner or occupier of land forming an undercliff owes a measured duty of care to prevent danger to higher land from lack of support due to erosion from natural causes provided the defect is patent. If the owner or occupier was not aware of the defect he will still be liable if a reasonable landowner or his servant would have seen it. However, the owner or occupier will not be liable if the defect was merely latent and would not have been revealed without further investigation[6].

1 See *Rylands v Fletcher* (1868) LR 3 HL 330 at 338 per Lord Cairns LC; *West Cumberland Iron and Steel Co v Kenyon* (1879) 11 ChD 782 at 787, CA, per Brett LJ; *Salt Union Ltd v Brunner, Mond & Co* [1906] 2 KB 822. Thus no liability arises when, by the ordinary working of mines, subterranean water is tapped so as to dry up a well or the under stratum in adjoining property (*Acton v Blundell* (1843) 12 M & W 324; *Popplewell v Hodkinson* (1869) LR 4 Exch 248; see also *Smith v Fletcher* (1874) LR 9 Exch 64; affd sub nom *Fletcher v Smith* (1877) 2 App Cas 781, HL), or is liberated so as to flow by natural gravitation into adjoining mines (*Smith v Kenrick* (1849) 7 CB 515; *Baird v Williamson* (1863) 15 CBNS 376) even though the defendant knows what the consequences of such working will be (*Baird v Williamson*), or is penned back so as to flood an adjoining mine (*Lomax v Stott* (1870) 39 LJ Ch 834), or when the effect of such working is to admit a river which may flood the mines of the claimant and the defendant (*Crompton v Lea* (1874) LR 19 Eq 115) or to cause a subsidence and cracks in the defendant's land through which rain collects and escapes into the defendant's, and thence into the claimant's, mine (*Smith v Fletcher*; *Wilson v Waddell* (1876) 2 App Cas 95, HL); or when, by draining or excavating in his property, a person withdraws the subterranean water which supports the neighbouring land (*Popplewell v Hodkinson*; cf *Jordeson v Sutton, Southcoates and Drypool Gas Co* [1899] 2 Ch 217, CA), or withdraws running silt (*Fletcher v Birkenhead Corpn* [1906] 1 KB 605; affd [1907] 1 KB 205, CA), or dries up the sources of supply to a stream (*Chasemore v Richards* (1859) 7 HL Cas 349); or when, by draining his gravel pits, the defendant prevents a riparian owner lower down the stream from growing his watercress so well as formerly (*Weeks v Heward* (1862) 10 WR 557); or where water percolating in undefined channels under land is abstracted with the result that a neighbour is deprived of water percolating under his land (*Langbrook Properties Ltd v Surrey County Council* [1969] 3 All ER 1424, [1970] 1 WLR 161); or, possibly, when an owner refrains from cutting thistles which have grown naturally on his land and the thistle seeds have consequently been carried by the wind to his neighbour's fields (*Giles v Walker* (1890) 24 QBD 656, DC; but cf *Davey v Harrow Corpn* [1958] 1 QB 60 at 71-72, [1957] 2 All ER 305 at 309-310, CA; and see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1029). An owner is not liable for damage to a thing beneath his land caused by acts done or omitted to be done by him upon the land where he did not know, and could not reasonably be expected to know, of the existence of this thing: *Ilford UDC v Beal* [1925] 1 KB 671. It is a normal use of land to erect a retaining wall on it (*Ilford UDC v Beal*; *St Anne's Well Brewery Co v Roberts* (1928) 140 LT 1, CA), or to build a house, even if lateral pressure on lower land is thereby increased (*Wilkins v Leighton* [1932] 2 Ch 106). Cf *Miller v Robert Addie & Sons' Collieries* 1934 SC 150, Ct of Sess (laying of gas service pipe a natural user); *Macpherson v London Passenger Transport Board* (1946) 175 LT 279 (in the absence of a covenant to repair retaining wall, there is no liability for subsidence caused possibly by weakness in the wall, but the defendants would be liable if they did anything to remove support from the wall). See further **BOUNDARIES** vol 4(1) (2002 Reissue) PARA 972 et seq; **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 9; **NEGLIGENCE** vol 78 (2010) PARA 29 et seq; and see also **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 184 et seq.

2 As to the special liability of an occupier in respect of certain injurious weeds see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1029 et seq.

3 *Davey v Harrow Corpn* [1958] 1 QB 60 at 71-73, [1957] 2 All ER 305 at 309-310, CA; *McCombe v Read* [1955] 2 QB 429, [1955] 2 All ER 458; *Noble v Harrison* [1926] 2 KB 332; *Morgan v Khyatt* [1964] 1 WLR 475, PC; *Solloway v Hampshire County Council* (1981) 79 LGR 449, CA. In *Russell v London Borough of Barnet* (1984) 83 LGR 152, a highway authority was held liable for foreseeable damage caused by encroaching tree roots even though it did not own the trees. See also *Delaware Mansions Ltd v Westminster City Council* [2001] UKHL 55, [2002] 1 AC 321, [2001] 4 All ER 737; *Hurst v Hampshire County Council* (1997) 96 LGR 27, [1997] 2 EGLR 164, CA. For the rights and duties of owners or occupiers as to trees on or near boundaries and dangerous fences etc see **BOUNDARIES** vol 4(1) (2002 Reissue) PARA 942 et seq. See also *Leakey v National Trust for Places of Historic Interest or Natural Beauty* [1980] QB 485, [1980] 1 All ER 17, CA, where the National Trust, which knew that its sloping bank of earth threatened the plaintiff's property below, was held liable in nuisance even though the damage arose from natural causes. In *Wandsworth LBC v Railtrack plc* [2001] EWCA Civ 1236, [2002] QB 756, [2002] 2 WLR 512, CA, a landowner was held liable for failing to prevent a public nuisance caused by pigeon-droppings on the highway.

4 See *Rees v Skerrett* [2001] EWCA Civ 760, [2001] 1 WLR 1541; cf *Phipps v Pears* [1965] 1 QB 76, [1964] 2 All ER 35, CA (no easement to be protected from the weather).

5 Thus it has been held a justifiable user of premises, for which no liability arises for the inconvenience caused, when a person has pulled down the wall of a vault in ignorance of the existence of an adjoining vault (*Chadwick v Trower* (1839) 6 Bing NC 1); when he has stored timber on the roof of his building whereby his neighbour's chimneys were caused to smoke (*Bryant v Lefever* (1879) 4 CPD 172, CA); when he has used a lower floor of premises for manufacture with a heating apparatus, ignorant of the fact that the business on the upper floor was sensitive to heat, the heat from below not being such as to cause inconvenience or personal discomfort to the persons working above (*Robinson v Kilvert* (1889) 41 ChD 88, CA); or when he has used his dwelling house for music and singing lessons (*Christie v Davey* [1893] 1 Ch 316) or a crèche (*Moy v Stoop* (1909) 25 TLR 262).

6 *Holbeck Hall Hotel Ltd v Scarborough Borough Council* [2000] QB 836, [2000] 2 All ER 705, CA.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(2) NUISANCES BETWEEN NEIGHBOURING PROPERTIES/(i) Injury to Property/119. Acts beyond ordinary user.

119. Acts beyond ordinary user.

As a general rule, no act can be justified as an ordinary user of premises which in fact results in substantial interference with the ordinary use and enjoyment of property by other persons[1]. Also a person who injures the property of another or disturbs him in his legitimate enjoyment of it cannot justify that injury or disturbance as being the natural result of the exercise of his own rights of enjoyment, if he exercises his rights in an excessive and extravagant manner[2], or, it seems, if the inconvenience or injury resulting from the exercise of rights might easily be avoided[3]. An owner of land adjoining a highway owes a duty to prevent it from becoming a nuisance to those using the highway[4]. A useful test whether lawful activities constitute a nuisance is what is reasonable according to the ordinary usages of mankind living in a particular society[5].

1 *Walter v Selfe* (1851) 4 De G & Sm 315; *Bamford v Turnley* (1862) 3 B & S 66, Ex Ch; *Cavey v Ledbitter* (1863) 13 CBNS 470 (brick-burning near dwelling houses); *Bostock v North Staffordshire Rly Co* (1852) 5 De G & Sm 584 (attracting to a reservoir large crowds of persons, who trespassed upon and damaged the plaintiff's property). See also *Chase v LCC and Leslie & Co Ltd* (1898) 62 JP 184; *Stockport Waterworks Co v Potter* (1861) 7 H & N 160 (polluting water in the course of carrying on business); *Bartlett v Marshall* (1896) 60 JP 104; *A-G v Cole & Son* [1901] 1 Ch 205 (fat-melting business); *Knight v Isle of Wight Electric Light and Power Co* (1904) 73 LJ Ch 299 (interference with ordinary comfort by vibration etc). In *A-G v Corke* [1933] Ch 89 it was held that, in bringing onto his land, for his own profit, a number of caravan dwellers, the defendant had put his land to an abnormal use and could be restrained by injunction from allowing such persons to commit nuisances on neighbouring land. Cf *Smith v Scott* [1973] Ch 314, [1972] 3 All ER 645, where undesirable tenants were held not to be the responsibility of the landlord, for he had no control over them. As to damage caused by poisonous or overhanging trees see **BOUNDARIES** vol 4(1) (2002 Reissue) PARA 942 et seq.

2 See PARAS 116-118, 120; and *Wallace v M'Cartan* [1917] 1 IR 377 (connecting drain with sewer).

3 *Beardmore v Tredwell* (1862) 3 Giff 683; *Fritz v Hobson* (1880) 14 ChD 542. See also *Vaughan v Menlove* (1837) 3 Bing NC 468.

4 *A-G v Tod Heatley* [1897] 1 Ch 560, CA; *Barker v Herbert* [1911] 2 KB 633, CA; *Stewart v Adams* 1920 SC 129, Ct of Sess (deposit of poisonous substance causing injury to grazing cow). As to nuisance by use of land adjoining a highway see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 328.

5 *Sedleigh-Denfield v O'Callagan* [1940] AC 880 at 903, [1940] 3 All ER 349 at 364, HL, per Lord Wright, cited by Lord Evershed MR in *Thompson-Schwab v Costaki* [1956] 1 All ER 652, [1956] 1 WLR 335, CA (nuisance to inhabitants of residential street caused by the use of a house for the purposes of prostitution).

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(2) NUISANCES BETWEEN NEIGHBOURING PROPERTIES/(i) Injury to Property/120. Extraordinary and unreasonable user.

120. Extraordinary and unreasonable user.

A person is not entitled by applying his property to extraordinary or unreasonable uses or purposes to impose upon his neighbours burdens which, in the ordinary course of things, they are not called upon to bear[1]. Examples of such extraordinary or unreasonable user are interference with the course of natural agencies or conditions[2], use of premises for unusual and unsuitable purposes[3] and use of premises for dangerous purposes or purposes which involve the escape of noxious fumes or vapours[4].

1 *Ball v Ray* (1873) 8 Ch App 467; *Jenkins v Jackson* (1888) 40 ChD 71 (room over offices used for dancing); *Bamford v Turnley* (1862) 3 B & S 66, Ex Ch; *Walter v Selfe* (1851) 4 De G & Sm 315 (brick-burning near dwellings).

2 See PARA 121.

3 See PARA 122.

4 See *Musgrove v Pandelis* [1919] 2 KB 43, CA (motor car as dangerous object in garage). As to the use of property for dangerous purposes and the escape of dangerous things see PARAS 147-154.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(2) NUISANCES BETWEEN NEIGHBOURING PROPERTIES/(i) Injury to Property/121. Interference with natural conditions.

121. Interference with natural conditions.

If an owner or occupier[1] interferes with natural agencies or conditions and thereby imposes a heavier burden upon his neighbour he may be liable in an action for nuisance at the suit of the neighbour for damage occasioned thereby to the neighbour[2]. However, the abstraction of water which is percolating in undefined channels under the occupier's land does not give rise to an action in nuisance by his neighbour, notwithstanding that this results in the diminution in the quantity of water percolating under the neighbour's land and thereby causes him injury[3]. Nor will a higher owner be liable merely for permitting the drainage of natural unconcentrated water through his land onto lower-lying land of his neighbour[4]. It has also been held at first instance, however, that the neighbour is under no obligation in such circumstances to receive the water and is entitled to prevent it from draining through his land, even if he thereby causes damage to the higher land, provided that the measures he takes are in accordance with reasonable user of his own property[5]. Nevertheless this proposition cannot be regarded as settled beyond doubt as the Court of Appeal has left open the question of its correctness[6].

1 As to liability in private nuisance see PARAS 181-186.

2 *West Cumberland Iron and Steel Co v Kenyon* (1879) 11 ChD 782, CA, where water tapped on the defendant's land was allowed ultimately to percolate onto the plaintiff's land as it would have done if not tapped, and it was held that the burden had not increased and therefore there was no cause of action. Instances of damage caused by interference with natural conditions are where an owner or occupier erects a cornice so as to overhang his neighbour's property (*Fay v Prentice* (1845) 1 CB 828; see also *Reynolds v Clark* (1725) 1 Stra 634); or where a railway company, in making a cutting, removed an impervious stratum of soil without taking precautions to prevent flood water soaking through the exposed stratum (*Bagnall v London and North Western Rly Co* (1861) 7 H & N 423; affd (1862) 1 H & C 544, Ex Ch); or where a mine shaft was sunk and

subsequently abandoned without being properly protected (*Re Williams v Groucott* (1863) 4 B & S 149); or where water which had collected by natural agencies was pumped to a higher level, from which it escaped into an adjoining mine (*Baird v Williamson* (1863) 15 CBNS 376); or where the defendants had diverted a stream from which water escaped into surface hollows, caused by the ordinary working of a mine, and through them escaped into and flooded the plaintiffs' mine (*Fletcher v Smith* (1877) 2 App Cas 781, sub nom *Smith v Musgrave* 47 LJQB 4, HL); or where an artificial mound was raised which collected and discharged water to the damage of adjoining premises (*Broder v Saillard* (1876) 2 ChD 692; *Brine v Great Western Rly Co* (1862) 2 B & S 402; *Hurdman v North Eastern Rly Co* (1878) 3 CPD 168, CA; and see also *Priest v Manchester Corpn* (1915) 84 LJKB 1734, where the plaintiff was injured by falling into an excavation caused in a road surface by water running from land originally let to the defendants as a tipping ground); or where land was overstocked with game to the damage of the neighbours (*Farrer v Nelson* (1885) 15 QBD 258); or where a mound of earth and debris was placed against a wall and chemicals deposited on it which percolated through the wall (*Maberley v Henry W Peabody & Co of London Ltd, Rowland Smith Motors Ltd and Rowland Smith* [1946] 2 All ER 192); and cf the cases cited in PARA 118 note 1. See also *Pemberton v Bright* [1960] 1 All ER 792, [1960] 1 WLR 436, CA (diversion of stream through culvert and subsequent flooding after culvert had been blocked).

3 *Langbrook Properties Ltd v Surrey County Council* [1969] 3 All ER 1424, [1970] 1 WLR 161. See also **WATER AND WATERWAYS** vol 100 (2009) (Reissue) PARAS 105, 220. As to the percolation of water through the working of mines see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARAS 270-271.

4 See *Palmer v Bowman* [2000] 1 All ER 22, [2000] 1 WLR 842, CA. See also *Home Brewery Co Ltd v William Davis & Co (Leicester) Ltd* [1987] QB 339, sub nom *Home Brewery Co Ltd v William Davis & Co (Loughborough) plc* [1987] 1 All ER 637.

5 See *Home Brewery Co Ltd v William Davis & Co (Leicester) Ltd* [1987] QB 339, sub nom *Home Brewery Co Ltd v William Davis & Co (Loughborough) plc* [1987] 1 All ER 637.

6 See *Palmer v Bowman* [2000] 1 All ER 22, [2000] 1 WLR 842, CA.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(2) NUISANCES BETWEEN NEIGHBOURING PROPERTIES/(i) Injury to Property/122. Unusual and unsuitable user.

122. Unusual and unsuitable user.

The conversion of premises from their original and usual purposes to purposes which are unusual and unsuitable, having regard to the neighbourhood and the surrounding circumstances, may amount to a nuisance[1].

1 *Ball v Ray* (1873) 8 Ch App 467 (use of part of house in residential street in London as stables); *Sanders-Clark v Grosvenor Mansions Co Ltd and D'Allessandri* [1900] 2 Ch 373 (conversion of residential premises into restaurant). Cf *Newman v Real Estate Debenture Corpn Ltd and Flower Decorations Ltd* [1940] 1 All ER 131. See also the cases cited in PARAS 118 note 5, 119 note 1.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(2) NUISANCES BETWEEN NEIGHBOURING PROPERTIES/(i) Injury to Property/123. Liability for damage to property caused by noxious fumes or vapours.

123. Liability for damage to property caused by noxious fumes or vapours.

Where fumes or vapours which are intrinsically noxious escape and damage the property of a neighbour, then, in the absence of an easement[1], it is an actionable nuisance if the effect is to diminish the value of the property and the comfort and enjoyment of it[2].

Such damage may be caused by noxious fumes or vapours from the burning of bricks[3], lime[4] or arsenic[5], smelting and reducing minerals[6], the process of calcining[7], the making of coke[8] or

cement[9], gas works[10], an oil distributing depot[11], the screening of coal[12] and even, it seems, by noxious vapours from a restaurant[13].

Penalties are laid down for wilfully or negligently causing chimney fires[14].

1 As to the right to air and the right to pollute air see **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARAS 249-251. Although it is theoretically possible to acquire the right to pollute as an easement, in practice it is difficult to establish such a right. As to the statutory control of air pollution see the Environmental Protection Act 1990; the Clean Air Act 1993; **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 189 et seq; and PARAS 115, 155 et seq.

2 *St Helen's Smelting Co v Tipping* (1865) 11 HL Cas 642 (noxious vapours from copper smelting). It is otherwise where ordinarily harmless heating is injurious to a particular trade of a specially delicate nature: *Robinson v Kilvert* (1889) 41 ChD 88, CA. As to the liability for smoke, fumes and smells causing injury to health and comfort see PARA 126.

3 See *Barwell v Brooks* (1843) 15 Jur 418n; *Walter v Selfe* (1851) 4 De G & Sm 315; *Pollock v Lester* (1853) 11 Hare 266; *Bamford v Turnley* (1862) 3 B & S 66, Ex Ch; *Beardmore v Tredwell* (1862) 3 Giff 683; *Cavey v Ledbitter* (1863) 13 CBNS 470; *Luscombe v Steer* (1867) 15 WR 1191; *A-G v Tossell* (1867) 1 Seton's Judgments and Orders (7th Edn) 600; *Roberts v Clarke* (1868) 18 LT 49; *White v Jameson* (1874) LR 18 Eq 303.

4 See *Harris v James* (1876) 45 LJQB 545.

5 See *R v Garland* (1851) 15 JP 260.

6 See *Bankart v Houghton* (1860) 27 Beav 425; *St Helen's Smelting Co v Tipping* (1865) 11 HL Cas 642.

7 See *Shotts Iron Co v Inglis* (1882) 7 App Cas 518, HL.

8 See *Salvin v North Brancepeth Coal Co* (1874) 9 Ch App 705; *Holling v Yorkshire Traction Co Ltd* [1948] 2 All ER 662.

9 See *A-G v Francis* (1874) Seton's Judgments and Orders (7th Edn) 601; *Umfreville v Johnson* (1875) 10 Ch App 580.

10 *Wood v Conway Corpn* [1914] 2 Ch 47, CA.

11 *Halsey v Esso Petroleum Co Ltd* [1961] 2 All ER 145, [1961] 1 WLR 683.

12 *Pwllbach Colliery Co Ltd v Woodman* [1915] AC 634, HL.

13 See *Dore v Pecorini* (1887) 31 Sol Jo 726.

14 See **FIRE SERVICES** vol 18(2) (Reissue) PARA 7. As to the statutory control of smoke and other nuisances see the Clean Air Act 1993; the Environmental Protection Act 1990; PARAS 115, 155 et seq.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(2) NUISANCES BETWEEN NEIGHBOURING PROPERTIES/(ii) Injury to Health and Comfort/124. General principles.

(ii) Injury to Health and Comfort

124. General principles.

Apart from any limit to the enjoyment of his property which may have been acquired against him by contract[1], grant or prescription[2], every person is entitled, as against his neighbour, to the comfortable and healthful enjoyment of the premises owned or occupied by him whether for pleasure or business[3]. In deciding whether in any particular case this right has been invaded and a nuisance thereby caused, it is necessary to determine whether the act complained of is an inconvenience materially interfering with the ordinary physical comfort of human existence,

not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions[4]. It is also necessary to take into account the circumstances and character of the locality in which the complainant is living and any similar annoyances which exist or previously existed there[5].

1 See *Lyttelton Times Co Ltd v Warners Ltd* [1907] AC 476, PC, where it was held that a tenant could not complain of noise and vibration caused by the landlord using the adjoining building for the purpose and in the manner contemplated by them both when making the lease. Cf *Cheater v Cater* [1918] 1 KB 247, CA. See further *Pwllbach Colliery Co Ltd v Woodman* [1915] AC 634, HL, where it was held that an adjoining tenant had no right under his lease to wash and screen coal so that coal dust was carried over the plaintiff's sausage factory; *A-G v Cory Bros & Co Ltd* [1921] 1 AC 521, HL; and *Thomas v Lewis* [1937] 1 All ER 137, where it was held to be an implied term of a contract to grant grazing rights that the grantor should be entitled to work a quarry on the land. See also *Dublin (South) City Market Co v McCabes Ltd* [1953] IR 283. As to the principle that a man must not derogate from his own grant see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 58; and as to the implied grant of easements see **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 63. As to the effect of a covenant for quiet enjoyment see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 508 et seq.

2 As to prescriptive rights see PARA 193; and see generally **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 74 et seq.

3 See *A-G v Hastings Corpn* (1950) 94 Sol Jo 225, CA, where this statement of the law was approved.

4 *Walter v Selfe* (1851) 4 De G & Sm 315 at 322 per Knight Bruce V-C; *Thompson-Schwab v Costaki* [1956] 1 All ER 652, [1956] 1 WLR 335, CA, where an interlocutory injunction restraining the use of premises for prostitution was granted; *Allison v Merton, Sutton and Wandsworth Area Health Authority* [1975] CLY 2450, where an injunction was granted where the defendant's hospital boilers interfered with the plaintiff's sleep so as to induce feelings of depression although without causing injury to health measurable in medical terms; *Miller v Jackson* [1977] QB 966, [1977] 3 All ER 338, CA, where an injunction was refused where balls from a cricket ground close to the plaintiff's house were frequently hit into the garden (see also PARAS 146 note 2, 198 note 8). Picketing in the vicinity of business premises, if accompanied by violence, obstruction, annoyance or molestation, may amount to a nuisance: *Hubbard v Pitt* [1976] QB 142 at 189, [1975] 3 All ER 1 at 19, CA, per Orr LJ; and see *J Lyons & Sons v Wilkins* [1899] 1 Ch 255, CA; *Ward, Lock & Co Ltd v Operative Printers' Assistants' Society* (1906) 22 TLR 327, CA. As to statutory and other controls on picketing see **EMPLOYMENT** vol 41 (2009) PARA 1347 et seq.

5 *St Helen's Smelting Co v Tipping* (1865) 11 HL Cas 642; *Polsue and Alfieri Ltd v Rushmer* [1907] AC 121, HL. However, the establishment of an industrial process may amount to a nuisance notwithstanding that similar processes are characteristic of the neighbourhood: *Maguire v Charles M'Neil Ltd* 1922 SC 174, Ct of Sess; *M'Ewen v Steedman and M'Alister* 1912 SC 156, Ct of Sess. See further *Leeman v Montagu* [1936] 2 All ER 1677 (extensive poultry farming in rural but residential area).

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(2) NUISANCES BETWEEN NEIGHBOURING PROPERTIES/(ii) Injury to Health and Comfort/125. Noise and vibration.

125. Noise and vibration.

The making, or causing to be made, of such a noise or vibration as materially interferes[1] with the ordinary comfort of the neighbouring inhabitants, when judged by the standard previously stated[2], is an actionable nuisance and one for which an injunction may be granted[3]. It is no excuse that the place where it is made is in a noisy neighbourhood if the nuisance complained of is a material addition to the noise already existing[4], or that the best known means have been taken to prevent or reduce the noise[5], or that the cause of the nuisance is the exercise of a trade in a reasonable and proper manner and in a reasonable place[6]. Operations on land which are a normal use of land for temporary constructional purposes according to the technical developments of the day do not amount to a nuisance if they are conducted with all reasonable skill, and if all reasonable precautions not to cause annoyance to neighbours are taken; but

where such precautions are not taken, damages attributable to the unreasonable use constituting the nuisance may be recovered[7].

The question of nuisance by noise (assuming the absence of malice) is one of degree and depends on the circumstances of the case[8].

In addition to civil proceedings for an injunction[9] or damages[10], there are many statutory remedies for the control of excessive noise and vibration[11].

1 Injunctions were refused, on the ground that the noise was not sufficient materially to interfere with comfort, in *Gaunt v Fynney* (1872) 8 Ch App 8 (noise from a factory alleged to disturb domestic comfort); *Fanshawe v London and Provincial Dairy Co* (1888) 4 TLR 694 (noise from a dairy business); *Heath v Brighton Corpn* (1908) 98 LT 718 (humming noise from electrical generating station alleged to disturb worshippers in a church); *Hardman v Holberton* [1866] WN 379 (church bells); *Harrison v Southwark and Vauxhall Water Co* [1891] 2 Ch 409 (noise of pumps in sinking a shaft); *Byass v Bettam* (1885) 2 TLR 88; *Phelps v London Corpn* [1916] 2 Ch 255 (temporary inconvenience). Residents in large industrial cities may have to put up with a certain amount of noise accompanying and incidental to the reasonable recreation of a crowded population: *New Imperial and Windsor Hotel Co Ltd v Johnson* [1912] 1 IR 327. In *Murdoch v Glacier Metal Co Ltd* [1998] EHLR 198, CA, night-time factory noise which only marginally exceeded the World Health Organisation's recommended level was held not to be an actionable nuisance. As to the granting of injunctions in nuisance cases see PARAS 230-236. As to noise and vibration on aerodromes and from aircraft see **AIR LAW** vol 2 (2008) PARA 259 et seq. As to byelaws restraining noises in streets see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 227; as to noise in a street as a statutory nuisance see PARAS 115, 165; as to sound-proofing of buildings affected by public works see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 861 et seq; and as to compensation for injury to the value of land by noise, vibration etc by the use of public works see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 883 et seq. As to possible liability to fixed penalty notices in respect of burglar alarms see the Clean Neighbourhoods and Environment Act 2005 s 73; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 846.

2 See PARA 124.

3 *A-G (on the relation of Glamorgan County Council and Pontardawe RDC) v PYA Quarries Ltd* [1957] 2 QB 169, [1957] 1 All ER 894, CA (nuisance by dust and vibration); *Bradley v Gill* (1688) 1 Lut 69; *Styan v Hutchinson* (1799) 2 Selwyn's NP (13th Edn) 1068; *Vanderpant v Mayfair Hotel Co Ltd* [1930] 1 Ch 138; *Halsey v Esso Petroleum Co Ltd* [1961] 2 All ER 145, [1961] 1 WLR 683 (noise from road tankers in oil depot); *Buley v British Railways Board* [1975] CLY 2458, CA (unreasonably noisy operation of goods terminal at night); *Dunton v Dover District Council* (1977) 76 LGR 87, where an injunction was granted to a hotel owner restraining a local authority from admitting to a play area children over the age of 12, or from opening it outside the hours of 10 am and 6.30 pm. See also PARAS 230-236. For a case where a prescriptive right to make a noise was held not to have been acquired see *Sturges v Bridgman* (1879) 11 ChD 852, CA. See also PARA 193; and **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 90.

4 *Crump v Lambert* (1867) LR 3 Eq 409 (affd 17 LT 133); *Rushmer v Polsue and Alfieri Ltd* [1906] 1 Ch 234, CA (affd sub nom *Polsue and Alfieri Ltd v Rushmer* [1907] AC 121, HL); *Maguire v Charles M'Neil Ltd* 1922 SC 174, Ct of Sess.

5 *Walker v Brewster* (1867) LR 5 Eq 25; *Rushmer v Polsue and Alfieri Ltd* [1906] 1 Ch 234, CA (affd sub nom *Polsue and Alfieri Ltd v Rushmer* [1907] AC 121, HL).

6 *Scott v Firth* (1864) 4 F & F 349; *Gaunt v Fynney* (1872) 8 Ch App 8. Public interest is no defence to the existence of a private nuisance, but may be relevant to the appropriate remedy: *Dennis v Ministry of Defence* [2003] EWHC 793 (QB), [2003] 2 EGLR 121 (military aircraft).

7 *Andreae v Selfridge & Co Ltd* [1938] Ch 1, [1937] 3 All ER 255, CA; followed in *Lebor v Trans-World Airline Inc* (1953) Times, 14 February, CA. See also *Biard v Deal Corpn* (1961) 12 P & CR 398, Lands Tribunal; *Emms v Polya* (1973) 227 Estates Gazette 1659.

8 *Gaunt v Fynney* (1872) 8 Ch App 8. In an action for a nuisance by noise the intention of the person making the noise must be considered: *Christie v Davey* [1893] 1 Ch 316; *Hollywood Silver Fox Farm Ltd v Emmett* [1936] 2 KB 468, [1936] 1 All ER 825; *Mason v Smith* (1953) 162 Estates Gazette 5, CA (telephone, radio and vacuum cleaner).

9 See PARAS 230-236.

10 See PARAS 227-229.

11 See eg the Environmental Protection Act 1990 ss 79-82; the Clean Neighbourhoods and Environment Act 2005; the Noise Act 1996; PARAS 115, 164, 225-226; **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 817 et seq; and **AIR LAW** vol 2 (2008) PARAS 259-264, 396-405. See also the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, regs 54-60; and **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARAS 345-353.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(2) NUISANCES BETWEEN NEIGHBOURING PROPERTIES/(ii) Injury to Health and Comfort/126. Smoke, fumes and smells.

126. Smoke, fumes and smells.

Smoke[1], fumes[2] or smells[3], either together or singly, which materially interfere with the ordinary physical comfort of human existence, when judged by the standard previously stated[4], constitute a nuisance in law. They need not be actually noxious or injurious to health[5]; and it is immaterial that there are other sources of discomfort in the neighbourhood, if the one complained of is a material addition to it[6]. The fact that the nuisance existed long before the complainant occupied his premises does not relieve the offender[7], unless he can show that, as against the complainant, he has acquired the right to commit the annoyance complained of[8]. If a nuisance exists, it cannot be justified on the ground that the place is a suitable or convenient one[9]; or that it arises from the defendant's use of his own property in a common and useful manner and for his own convenience[10]; or that the benefit to the public in the neighbourhood far exceeds the inconvenience to the claimant[11]; or that the defendant has been granted the right to carry on the trade if it is not proved that the trade cannot be carried on without causing inconvenience[12]; or that others in the vicinity do not complain[13].

In these cases the question of nuisance or no nuisance is pre-eminently one of degree, and no specific rules can be laid down. Circumstances and the locality must also be considered, for that which would be a nuisance in one district may be tolerated in another[14].

1 As to when smoke amounts to nuisance see further PARA 130. As to statutory nuisances concerning smoke, fumes, smells etc see the Environmental Protection Act 1990 s 79; and PARAS 115, 225-226. See also the Clean Air Act 1993; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 191. As to the right to light see **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARAS 222-248.

2 As to injury to property by noxious fumes see PARA 123.

3 As to easements of air and the right to pollute air see **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARAS 249-251. The creation of a stagnation of air by increasing the height of a building on one's own land is not, it seems, actionable as a nuisance even though the effect is that smells emanating from adjacent land are not carried off and that land becomes less healthy through want of ventilation: see *Chastey v Ackland* [1895] 2 Ch 389, CA; criticised on appeal [1897] AC 155, HL, where the appeal was, however, withdrawn on terms. As to the pollution of water see PARA 193 note 1; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 270 et seq.

4 See PARA 124.

5 *R v White and Ward* (1757) 1 Burr 333; *Banbury Urban Sanitary Authority v Page* (1881) 8 QBD 97, DC; *A-G v Keymer Brick and Tile Co Ltd* (1903) 67 JP 434; *Halsey v Esso Petroleum Co Ltd* [1961] 2 All ER 145, [1961] 1 WLR 683.

6 *Salvin v North Brancepeth Coal Co* (1874) 9 Ch App 705. As to joint nuisance see PARA 114.

7 *Bliss v Hall* (1838) 4 Bing NC 183. As to the defence of coming to the nuisance see PARA 198 text and note 8; and *St Helen's Smelting Co v Tipping* (1865) 11 HL Cas 642; *Crump v Lambert* (1867) LR 3 Eq 409 (affd 17 LT 133); *Shotts Iron Co v Inglis* (1882) 7 App Cas 518, HL.

8 *Walter v Selfe* (1851) 4 De G & Sm 315; *Pwllbach Colliery Co Ltd v Woodman* [1915] AC 634, HL. When a proprietor of land begins to carry on works which pollute the atmosphere, the proprietor of adjacent land has an

immediate cause of action, even though the use of his ground is not immediately affected: see *Harvie v Robertson* (1903) 5 F 338, Ct of Sess.

9 *Bamford v Turnley* (1862) 3 B & S 66, Ex Ch; *Cavey v Ledbitter* (1863) 13 CBNS 470; *St Helen's Smelting Co v Tipping* (1865) 11 HL Cas 642.

10 *Walter v Selfe* (1851) 4 De G & Sm 315; *Pwllbach Colliery Co Ltd v Woodman* [1915] AC 634, HL.

11 *Beardmore v Tredwell* (1862) 3 Giff 683. The public interest may, however, occasionally lead to refusal of an injunction: see PARA 230.

12 *Pwllbach Colliery Co Ltd v Woodman* [1915] AC 634, HL; but see *Gillingham Borough Council v Medway (Chatham) Dock Co Ltd* [1993] QB 343, [1992] 3 All ER 923 (grant of planning permission may be relevant in exceptional cases if it changed the nature of the locality). See also *Wheeler v JJ Saunders Ltd* [1996] Ch 19, [1995] 2 All ER 697, CA; *Hunter v Canary Wharf Ltd* [1997] AC 655, [1997] 2 All ER 426, HL; and PARA 105.

13 *Luscombe v Steer* (1867) 15 WR 1191; see also *Andreae v Selfridge & Co Ltd* [1938] Ch 1 at 9, [1937] 3 All ER 255 at 267, CA, per Sir Wilfred Greene MR.

14 See *A-G v Cole & Son* [1901] 1 Ch 205; *Reinhardt v Mentasti* (1889) 42 ChD 685; *Bland v Yates* (1914) 58 Sol Jo 612 (smells came from, and house flies bred in, manure heaps used by a market gardener in a district of market gardens; the defendant was restrained on the ground that he was doing much more than was to be expected from market gardeners); *Stearn v Prentice Bros Ltd* [1919] 1 KB 394 (bones collected by bone manure manufacturers attracted rats, which made their way to the plaintiff's land and there ate his corn, causing him substantial loss; it was not proved that the bones were excessive or unusual in quantity, and no cause of action was established against the defendants); *Milner v Spencer* (1976) 239 Estates Gazette 573 (a householder adjoining a farm could not complain of noise, smell and flies caused by the defendant keeping pigs; but leaving heaps of dung near his boundary was held to be a nuisance); *Bone v Seale* [1975] 1 All ER 787, [1975] 1 WLR 797, CA (smells from a pig farm were conceded to be a nuisance, but did not diminish the value of the land or cause ill health, although the plaintiff was awarded damages for loss of amenity).

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(2) NUISANCES BETWEEN NEIGHBOURING PROPERTIES/(ii) Injury to Health and Comfort/127. Fumes etc from commercial operations.

127. Fumes etc from commercial operations.

Apart from fumes and smells arising from trades held to be offensive[1], the vitiation of the atmosphere may be held to be a nuisance[2] and capable of being restrained by injunction when it arises from the burning of bricks[3], manure works[4], sewage works[5], glass works[6], cement works[7], chemical works[8], smoke from railway engine sheds[9], the stabling of horses left standing in a street opposite business premises for an unreasonable time[10], gasworks[11], the smelting of ore[12], a blacksmith's shoeing-forge[13], smoke from factory engines[14], the discharge and deposit of manure at a railway siding[15] or of night soil and other waste matter[16], the burning of mineral refuse[17], coke-ovens[18], stables[19], the deposit of house and street refuse[20], a cooking stove[21], the manufacture of fish guano and fish oil[22], or a fried fish shop[23]. A hospital for infectious diseases is not, however, necessarily a nuisance[24].

1 See PARA 129.

2 As to liability for damage to property caused by noxious fumes or vapours see PARA 123.

3 *Walter v Selfe* (1851) 4 De G & Sm 315; *Pollock v Lester* (1853) 11 Hare 266; *Cleeve v Mahany* (1861) 9 WR 882; *Beardmore v Tredwell* (1862) 3 Giff 683; *Bamford v Turnley* (1862) 3 B & S 66, Ex Ch; *Cavey v Ledbitter* (1863) 13 CBNS 470; *Luscombe v Steer* (1867) 17 LT 229; *Roberts v Clarke* (1868) 18 LT 49; *Bareham v Hall* (1870) 22 LT 116; *Dunston v Neal, Seely v Neal* (1885) 1 TLR 462.

4 *Knight v Gardner* (1869) 19 LT 673.

5 *Bainbridge v Chertsey Urban Council* (1914) 84 LJ Ch 626.

6 *Savile v Kilner* (1872) 26 LT 277.

7 *Umfreville v Johnson* (1875) 10 Ch App 580; *A-G v Francis* (1874) 1 Seton's Judgments and Orders (7th Edn) 595, 661.

8 *Bigsby v Dickinson* (1876) 4 ChD 24, CA; *Barlow v Bailey* [1871] WN 95; *Brooke v Wigg* (1878) 8 ChD 510, CA; *R v White and Ward* (1757) 1 Burr 333.

9 *Smith v Midland Rly Co and Lancashire and Yorkshire Rly Co* (1877) 37 LT 224.

10 *Benjamin v Storr* (1874) LR 9 CP 400.

11 *Broadbent v Imperial Gas Co* (1857) 7 De GM & G 436 (affd on appeal sub nom *Imperial Gas Light and Coke Co v Broadbent* (1859) 7 HL Cas 600); *Wood v Conway Corpn* [1914] 2 Ch 47, CA.

12 *Tipping v St Helen's Smelting Co* (1865) 1 Ch App 66 (affd sub nom *St Helen's Smelting Co v Tipping* 11 HL Cas 642); *Bankart v Houghton* (1860) 27 Beav 425.

13 *Gullick v Tremlett* (1872) 20 WR 358.

14 *Sampson v Smith* (1838) 8 Sim 272; *Crump v Lambert* (1867) LR 3 Eq 409.

15 *Swaine v Great Northern Rly Co* (1864) 4 De GJ & Sm 211.

16 *Great Central Rly Co v Doncaster RDC* (1917) 87 LJ Ch 80. As to the control of radioactive materials and waste see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1436 et seq.

17 *Fleming v Hislop* (1886) 11 App Cas 686 at 691, HL.

18 *Salvin v North Brancepeth Coal Co* (1874) 9 Ch App 705.

19 *Rapier v London Tramways Co* [1893] 2 Ch 588, CA.

20 *A-G v Keymer Brick and Tile Co Ltd* (1903) 67 JP 434.

21 *Sanders-Clark v Grosvenor Mansions Co Ltd and D'Allessandri* [1900] 2 Ch 373.

22 *A-G v Plymouth Fish Guano and Oil Co Ltd* (1911) 76 JP 19.

23 *Errington v Birt* (1911) 105 LT 373.

24 *Metropolitan Asylum District Managers v Hill* (1881) 6 App Cas 193, HL; *A-G v Rathmines and Pembroke Hospital Board* [1904] 1 IR 161, Ir CA; *A-G v Nottingham Corpn* [1904] 1 Ch 673; *Frost v King Edward VII Welsh etc Association* [1918] 2 Ch 180. See also *Withington Local Board of Health v Manchester Corpn* [1893] 2 Ch 19, CA (decided under public health legislation).

128. Interference with prospect, view or television reception.

Where there is no infringement of a right to light[1], and where the act complained of is otherwise lawful[2], no action lies for the invasion of privacy by the opening of windows, or for the obstruction of a view or prospect[3], even though the value of a house or premises may be diminished thereby[4].

It was formerly held that the ability to receive television transmissions free from occasional, even if recurrent and severe, electrical interference was not so important a part of an ordinary householder's enjoyment of his property as to make such interference an actionable nuisance[5].

Although this may no longer represent the modern law, interference caused by the mere presence of a tall building is not actionable as a private nuisance[6].

1 As to the right to light see **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 222 et seq.

2 If the act causing the interference with the prospect or view is a public nuisance, any loss arising from the interference may be recovered as damages. Where a council obstructed the plaintiff's windows by unlawfully erecting a stand in the public street, whereby the plaintiff lost the profit she would otherwise have made by letting the windows to view a procession, she was held entitled to receive such loss as special damage from the council: *Campbell v Paddington Corpn* [1911] 1 KB 869; but as to foreseeability of damage see PARA 187 note 2.

3 *Aldred's Case* (1610) 9 Co Rep 57b; *Knowles v Richardson* (1670) 1 Mod Rep 55; *Fishmongers' Co v East India Co* (1752) 1 Dick 163 per Lord Hardwicke LC; *A-G v Doughty* (1752) 2 Ves Sen 453; *Chandler v Thompson* (1811) 3 Camp 80 per Le Blanc J; *Wells v Ody* (1836) 7 C & P 410 per Parke B; *Re Penny and South Eastern Rly Co* (1857) 7 E & B 660 (no compensation for being overlooked from railway); *Turner v Spooner* (1861) 1 Drew & Sm 467; *Johnson v Wyatt* (1863) 2 De GJ & Sm 18 at 27 per Turner LJ; *Tapling v Jones* (1865) 11 HL Cas 290 at 305 per Lord Westbury LC; *Smith v Owen* (1866) 35 LJ Ch 317 (bringing forward adjoining shop front); *Butt v Imperial Gas Co* (1866) 2 Ch App 158 (gas meter blocking view of business premises); *Potts v Smith* (1868) LR 6 Eq 311; *Duke of Buccleuch v Metropolitan Board of Works* (1870) LR 5 Exch 221 at 237 (revsd as respects the right to compensation under statute (1872) LR 5 HL 418); *Dalton v Angus & Co* (1881) 6 App Cas 740 at 798, 824, HL; *Foli v Devonshire Club* (1887) 3 TLR 706 (obstructing view of a procession by erecting a stand); cf *Campbell v Paddington Corpn* [1911] 1 KB 869 (see note 2); *Browne v Flower* [1911] 1 Ch 219; *News of the World Ltd v Allen Fairhead & Sons Ltd* [1931] 2 Ch 402.

4 *Re Penny and South Eastern Rly Co* (1857) 7 E & B 660. No easement can exist in relation to the enjoyment by a landowner of the prospect or view from his property, or in relation to the privacy of the property: see **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 222.

5 See *Bridlington Relay Ltd v Yorkshire Electricity Board* [1965] Ch 436, [1965] 1 All ER 264; disapproved in *Nor-Video Services Ltd v Ontario Hydro* (1978) 84 DLR (3d) 221, Ont HC, on the ground that television viewing is now an important incident of the ordinary enjoyment of property since it is a source of information, education and entertainment. See also the text and note 6.

6 *Hunter v Canary Wharf Ltd* [1997] AC 655, [1997] 2 All ER 426, HL.

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129. Offensive trades.

Nuisances arising from activities formerly known as 'offensive trades' within the former public health legislation[1] are now regulated instead by local authorities under a statutory system of integrated pollution control and air pollution control[2]. Where a person carries on, in the area or part of the area of any local authority[3], a trade which (1) is an offensive trade within the meaning of the former legislation in that area or part of that area; and (2) constitutes a prescribed process[4] designated for local control for the carrying on of which an authorisation is required under the integrated pollution control provisions[5], the former public health legislation, and any byelaws made thereunder, ceased to apply to it as from the date on which such an authorisation was granted[6]. The Secretary of State[7] was given power to repeal by order the former legislation relating to offensive trades, appointing different days in relation to trades or businesses which constitute prescribed processes and those which do not, and has now exercised that power to repeal those provisions in their entirety[8].

Although nuisances arising from such activities may be dealt with under the integrated pollution control provisions, the common law liability remains and a person is guilty of an offence if, in the carrying on of any trade or occupation, he makes loud noises or offensive or

unwholesome smells[9] in such places and in such circumstances as to annoy a considerable number of the public[10] in the exercise of their common rights[11].

Certain trades and occupations, when carried on in populous places, have, by reason of the effluvia from them, been held to be nuisances at common law, for example a tallow chandler's[12], a lime-kiln and dye-house[13], fat-melting works[14], a slaughterhouse[15], a tallow melter's[16], a tan pit[17], a tanner's[18], soap works[19], horseflesh boilers[20], a varnish maker's[21], the keeping of pigs[22] or a brewhouse[23]; but no one of these is of necessity a nuisance[24].

1 See the Public Health Act 1936 ss 107, 108 (repealed). As to trades generally see **TRADE AND INDUSTRY** vol 97 (2010) PARA 801 et seq.

2 See the Environmental Protection Act 1990 Pt I (ss 1-28), s 84 (which provides for the gradual disapplication of the old controls in favour of the new system); the Repeal of Offensive Trades or Businesses Provisions Order 1995, SI 1995/2054; and the text and notes 3-8. See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 158 et seq. As to statutory nuisances see PARAS 115, 155-172, 225-226.

3 As to the meaning of 'local authority' see PARA 155 note 5.

4 Ie within the meaning of the Environmental Protection Act 1990 Pt I: see s 84(5); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 159.

5 Ie under the Environmental Protection Act 1990 s 6: see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 162.

6 See the Environmental Protection Act 1990 s 84(1), (2). The disapplication of byelaws applies in relation to the trade of fish frying as it applies in relation to an offensive trade within the meaning of the Public Health Act 1936 s 107 (repealed): Environmental Protection Act 1990 s 84(3), (5).

7 In any enactment 'Secretary of State' means one of Her Majesty's Principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355. The Secretary of State here concerned is the Secretary of State for Environment, Food and Rural Affairs.

8 See the Environmental Protection Act 1990 s 84(4); and the Repeal of Offensive Trades or Businesses Provisions Order 1995, SI 1995/2054, art 2. The repeal took effect from 1 September 1995: art 1.

9 Such smells need not be injurious to the health although offensive to the senses: *R v Neil* (1826) 2 C & P 485; and see *Bishop Auckland Local Board v Bishop Auckland Iron Co* (1882) 10 QBD 138, DC; *Malton Board of Health v Malton Manure Co* (1879) 4 Ex D 302.

10 See *R v White and Ward* (1757) 1 Burr 333; *R v Pappineau* (1726) 2 Stra 686; *R v Davey* (1805) 5 Esp 217.

11 See eg *R v White and Ward* (1757) 1 Burr 333 (noisome stinks); *R v Pappineau* (1726) 2 Stra 686 (smell from tannery); *R v Watts* (1826) 2 C & P 486 (smell from slaughterhouse); *R v Garland* (1851) 17 LTOS 39 (emission of poisonous fumes). See also PARA 126.

12 *Bliss v Hall* (1838) 4 Bing NC 183.

13 See *Aldred's Case* (1610) 9 Co Rep 57b.

14 *A-G v Cole & Son* [1901] 1 Ch 205; *R v Watts* (1826) 2 C & P 486.

15 *R v Cross* (1826) 2 C & P 483.

16 *Morley v Pragnell* (1638) Cro Car 510.

17 *Jones v Powell* (1628) Palm 536.

18 *R v Pappineau* (1726) 2 Stra 686.

19 *R v Pierce* (1683) 2 Show 327.

20 *Grindley v Booth* (1865) 3 H & C 669.

21 *R v Neil* (1826) 2 C & P 485.

22 *Aldred's Case* (1610) 9 Co Rep 57b.

23 *Jones v Powell* (1628) Palm 536 at 537.

24 *A-G v Cleaver* (1811) 18 Ves 211 at 218; *Gorton v Smart* (1822) 1 Sim & St 66.

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130. When smoke amounts to nuisance.

Even when unaccompanied by noise or noxious vapours, and although not injurious to health, smoke may constitute an actionable nuisance[1] or be the subject of indictment[2] provided that the annoyance produced is such as materially to interfere with ordinary comfort. The fact that the smoke issues from premises in a manufacturing town does not affect the question of nuisance if it can be shown that the annoyance otherwise caused has been materially increased[3]. Nuisances of this kind are now to a substantial extent regulated by statute[4].

1 *Aldred's Case* (1610) 9 Co Rep 57b; and see *Crump v Lambert* (1867) LR 3 Eq 409 (affd 17 LT 133); *Savile v Kilner* (1872) 26 LT 277; *Umfreville v Johnson* (1875) 10 Ch App 580; *Smith v Midland Rly Co and Lancashire and Yorkshire Rly Co* (1877) 37 LT 224; *Rapier v London Tramways Co* [1893] 2 Ch 588, CA; *Lambton v Mellish, Lambton v Cox* [1894] 3 Ch 163; *Husey v Bailey* (1895) 11 TLR 221; *Sanders-Clark v Grosvenor Mansions Co Ltd and D'Allessandri* [1900] 2 Ch 373.

2 See *R v White and Ward* (1757) 1 Burr 333; *R v Dewsnap* (1812) 16 East 194. As to indictments for nuisance see PARA 174.

3 See *Crump v Lambert* (1867) LR 3 Eq 409; affd on appeal 17 LT 133.

4 See the Environmental Protection Act 1990 ss 79-82; the Clean Air Act 1993; PARAS 115, 155-172, 225-226; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 191.

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(iii) High Hedges

131. Complaints about high hedges.

A complaint about a high hedge[1] is a complaint, not being a complaint about the effect of the roots of a high hedge[2], which: (1) is made by an owner[3] or occupier[4] of a domestic property[5], where he alleges that his reasonable enjoyment of that property[6] is being adversely affected by the height of a high hedge situated on land owned or occupied by another person[7]; or (2) is made by an owner of a domestic property that is for the time being unoccupied, where he alleges that the reasonable enjoyment of that property by a prospective occupier of that property would be adversely affected by the height of a high hedge situated on land owned or occupied by another person[8].

1 'High hedge' means so much of a barrier to light or access as: (1) is formed wholly or predominantly by a line of two or more evergreens; and (2) rises to a height of more than two metres above ground level: Anti-social Behaviour Act 2003 s 66(1). A line of evergreens is not to be regarded as forming a barrier to light or access if the existence of gaps significantly affects its overall effect as such a barrier at heights of more than two metres above ground level: s 66(2). 'Evergreen' means an evergreen tree or shrub or a semi-evergreen tree or shrub: s 66(3). As to the power to make regulations amending s 66 see s 83.

2 Anti-social Behaviour Act 2003 s 65(4).

3 'Owner', in relation to any land, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any person: (1) is entitled to receive the rack rent of the land; or (2) where the land is not let at a rack rent, would be so entitled if it were so let: Anti-social Behaviour Act 2003 s 82.

4 'Occupier', in relation to any land, means a person entitled to possession of the land by virtue of an estate or interest in it: Anti-social Behaviour Act 2003 s 82.

5 'Domestic property' means: (1) a dwelling; or (2) a garden or yard which is used and enjoyed wholly or mainly in connection with a dwelling: Anti-social Behaviour Act 2003 s 67(1). 'Dwelling' means any building or part of a building occupied, or intended to be occupied, as a separate dwelling: s 67(2).

6 A reference in the Anti-social Behaviour Act 2003 Pt 8 to a person's reasonable enjoyment of domestic property includes a reference to his reasonable enjoyment of a part of the property: s 67(3).

7 Anti-social Behaviour Act 2003 s 65(1).

8 Anti-social Behaviour Act 2003 s 65(2). In relation to a complaint falling within s 65(2), references in s 68 and s 69 (see PARAS 132-133) to the effect of the height of a high hedge on the complainant's reasonable enjoyment of a domestic property are to be read as references to the effect that it would have on the reasonable enjoyment of that property by a prospective occupier of the property: s 65(3). In relation to a complaint about a high hedge, 'complainant' means a person by whom the complaint is made or, if every person who made the complaint ceases to be an owner or occupier of the domestic property specified in the complaint, any other person who is for the time being an owner or occupier of that property, and references to the complainant include references to one or more of the complainants: s 65(5).

The Secretary of State and the National Assembly for Wales may make regulations amending s 65 for the purpose of extending the scope of complaints relating to high hedges to which Pt 8 applies: s 83(1)(a), (2). Regulations under s 83 may make such consequential amendments of Pt 8 as the Secretary of State or the National Assembly considers appropriate: s 83(3).

Part 8 and any provision made under it binds the Crown, but does not impose criminal liability on the Crown and does not affect the criminal liability of persons in the service of the Crown: s 84.

132. Complaints procedure.

Complaints[1] are to be made to the relevant authority[2], and are to be accompanied by such fee, if any, as the authority may determine[3]. If the authority considers that the complainant[4] has not taken all reasonable steps to resolve the matters complained of without proceeding by way of such a complaint to the authority, or that the complaint is frivolous or vexatious, it may decide that the complaint should not be proceeded with[5]. If the authority does not so decide, it must decide whether the height of the high hedge[6] specified in the complaint is adversely affecting the complainant's reasonable enjoyment of the domestic property[7] so specified[8] and, if so, what action, if any, should be taken in relation to that hedge, in pursuance of a remedial notice[9], with a view to remedying the adverse effect or preventing its recurrence[10]. If the authority decides that any such action should be taken, it must as soon as is reasonably practicable: (1) issue a remedial notice[11] implementing its decision[12]; (2) send a copy of that notice to every complainant, and to every owner[13] and every occupier[14] of the neighbouring land[15]; and (3) notify each of those persons of the reasons for its decision[16]. If the authority decides that the

complaint should not be proceeded with[17], or makes a decision[18] otherwise than in the complainant's favour[19], it must as soon as is reasonably practicable notify the appropriate person or persons[20] of any such decision and of its reasons for it[21].

1 Ie complaints to which the Anti-social Behaviour Act 2003 Pt 8 (ss 65-84) applies: see PARA 131.

2 Anti-social Behaviour Act 2003 s 68(1)(a). In relation to a complaint, the 'relevant authority' means the local authority in whose area that land is situated: s 65(5). 'Local authority', in relation to England, means a district council, a county council for a county in which there are no districts, a London borough council, or the Common Council of the City of London and, in relation to Wales, means a county council or a county borough council: s 82.

3 Anti-social Behaviour Act 2003 s 68(1)(b). A fee determined under s 68(1)(b) must not exceed the amount prescribed in regulations made in relation to complaints relating to hedges situated in England, by the Secretary of State and, in relation to complaints relating to hedges situated in Wales, by the National Assembly for Wales: s 68(7). The maximum fee has been prescribed as £320 in relation to Wales: High Hedges (Fees) (Wales) Regulations 2004, SI 2004/3241, reg 2. A fee received by a local authority by virtue of the Anti-social Behaviour Act 2003 s 68(1)(b) may be refunded by it in such circumstances and to such extent as it may determine: s 68(8).

4 As to the meaning of 'complainant' see PARA 131 note 8.

5 Anti-social Behaviour Act 2003 s 68(2).

6 As to the meaning of 'high hedge' see PARA 131 note 1.

7 As to the meaning of 'domestic property' see PARA 131 note 5. As to the meaning of 'reasonable enjoyment of domestic property' see PARA 131 note 6.

8 Anti-social Behaviour Act 2003 s 68(3)(a).

9 Ie under the Anti-social Behaviour Act 2003 s 69: see PARA 133.

10 Anti-social Behaviour Act 2003 s 68(3)(b).

11 Ie under the Anti-social Behaviour Act 2003 s 69: see PARA 133.

12 Anti-social Behaviour Act 2003 s 68(4)(a).

13 As to the meaning of 'owner' see PARA 131 note 3.

14 As to the meaning of 'occupier' see PARA 131 note 4.

15 Anti-social Behaviour Act 2003 s 68(4)(b). In relation to a complaint, the 'neighbouring land' means the land on which the high hedge is situated: s 65(5).

16 Anti-social Behaviour Act 2003 s 68(4)(c).

17 Anti-social Behaviour Act 2003 s 68(5)(a).

18 Ie a decision on either or both of the issues specified in the Anti-social Behaviour Act 2003 s 68(3): see the text and notes 8-10.

19 Anti-social Behaviour Act 2003 s 68(5)(b).

20 Every complainant is an appropriate person in relation to a decision falling within the Anti-social Behaviour Act 2003 s 68(5)(a) or (b), and every owner and every occupier of the neighbouring land is an appropriate person in relation to a decision falling within s 68(5)(b): s 68(6).

21 Anti-social Behaviour Act 2003 s 68(5).

133. Remedial notices.

A remedial notice is a notice issued by the relevant authority[1] in respect of a complaint[2], stating the following matters[3]: (1) that a complaint has been made to the authority about a high hedge[4] specified in the notice which is situated on land so specified[5]; (2) that the authority has decided that the height of that hedge is adversely affecting the complainant's[6] reasonable enjoyment of the domestic property[7] specified in the notice[8]; (3) the initial action[9] that must be taken in relation to that hedge before the end of the compliance period[10]; (4) any preventative action that it considers must be taken in relation to that hedge at times following the end of that period while the hedge remains on the land[11]; and (5) the consequences[12] of a failure to comply with the notice[13]. The action specified in a remedial notice is not to require or involve a reduction in the height of the hedge to less than two metres above ground level, or the removal of the hedge[14]. While a remedial notice has effect, the notice is a local land charge, and is binding on every person who is for the time being an owner[15] or occupier[16] of the land specified in the notice as the land where the hedge in question is situated[17].

The relevant authority may withdraw a remedial notice issued by it, or waive or relax a requirement of a remedial notice so issued[18]. Where the relevant authority exercises its power to withdraw a remedial notice, or waive or relax a requirement of a remedial notice, it must give notice of what it has done to every complainant, and every owner and every occupier of the neighbouring land[19].

1 As to the meaning of 'relevant authority' see PARA 132 note 2.

2 Ie a complaint to which the Anti-social Behaviour Act 2003 Pt 8 (ss 65-84) applies: see PARA 131.

3 Anti-social Behaviour Act 2003 s 69(1).

4 As to the meaning of 'high hedge' see PARA 131 note 1.

5 Anti-social Behaviour Act 2003 s 69(2)(a).

6 As to the meaning of 'complainant' see PARA 131 note 8.

7 As to the meaning of 'domestic property' see PARA 131 note 5. As to the meaning of 'reasonable enjoyment of domestic property' see PARA 131 note 6.

8 Anti-social Behaviour Act 2003 s 69(2)(b).

9 'Initial action' means remedial action or preventative action, or both: Anti-social Behaviour Act 2003 s 69(9). 'Remedial action' means action to remedy the adverse effect of the height of the hedge on the complainant's reasonable enjoyment of the domestic property in respect of which the complaint was made; and 'preventative action' means action to prevent the recurrence of the adverse effect: s 69(9).

10 Anti-social Behaviour Act 2003 s 69(2)(c). The 'compliance period' in the case of a remedial notice is such reasonable period as is specified in the notice for the purposes of s 69(2)(c) as the period within which the action so specified is to be taken, and that period begins with the operative date of the notice: s 69(6). A remedial notice takes effect on its operative date: s 69(4). The 'operative date' of a remedial notice is such date, falling at least 28 days after that on which the notice is issued, as is specified in the notice as the date on which it is to take effect: s 69(5). Section 69(4)-(6) has effect in relation to a remedial notice subject to (1) the exercise of any power of the relevant authority under s 70 (see the text and notes 18-19); and (2) the operation of ss 71-73 (see PARA 134) in relation to the notice: s 69(7).

11 Anti-social Behaviour Act 2003 s 69(2)(d).

12 Ie under the Anti-social Behaviour Act 2003 s 75 and s 77 (see PARAS 136, 137).

13 Anti-social Behaviour Act 2003 s 69(2)(e).

14 Anti-social Behaviour Act 2003 s 69(3).

15 As to the meaning of 'owner' see PARA 131 note 3.

16 As to the meaning of 'occupier' see PARA 131 note 4.

17 Anti-social Behaviour Act 2003 s 69(8).

18 Anti-social Behaviour Act 2003 s 70(1). The powers conferred by s 70 are exercisable both before and after a remedial notice has taken effect: s 70(2).

19 Anti-social Behaviour Act 2003 s 70(3). As to the meaning of 'neighbouring land' see PARA 132 note 15. The withdrawal of a remedial notice does not affect the power of the relevant authority to issue a further remedial notice in respect of the same hedge: s 70(4).

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134. Appeals.

Where the relevant authority[1] issues a remedial notice, withdraws such a notice, or waives or relaxes the requirements of such a notice, every person who is a complainant[2] in relation to the complaint by reference to which the notice was given, and every person who is an owner[3] or occupier[4] of the neighbouring land[5], may appeal to the appeal authority[6] against the issue or withdrawal of the notice or, as the case may be, the waiver or relaxation of its requirements[7]. Where the relevant authority makes a decision regarding whether the height of a high hedge[8] adversely affects the complainant's reasonable enjoyment of the domestic property[9], or regarding what action should be taken in relation to that hedge, or both[10], and that decision is otherwise than in the complainant's favour, the complainant may appeal to the appeal authority against the decision[11].

The appeal authority may by regulations make provision with respect to the procedure which is to be followed in connection with appeals to that authority[12] and other matters consequential on or connected with such appeals[13]. Any such regulations may, in particular, make provision: (1) specifying the grounds on which appeals may be made; (2) prescribing the manner in which appeals are to be made; (3) requiring persons making appeals to send copies of such documents as may be prescribed to such persons as may be prescribed; (4) requiring local authorities[14] against whose decisions appeals are made to send to the appeal authority such documents as may be prescribed; (5) specifying, where a local authority is required by virtue of head (4) to send the appeal authority a statement indicating the submissions which it proposes to put forward on the appeal, the matters to be included in such a statement; (6) prescribing the period within which a requirement imposed by the regulations is to be complied with; (7) enabling such a period to be extended by the appeal authority; (8) for a decision on an appeal to be binding on certain persons[15] in addition to the person by whom the appeal was made; (9) for incidental or ancillary matters, including the awarding of costs[16]. Where an appeal is made to the appeal authority[17], it may appoint a person to hear and determine the appeal on its behalf[18]. The appeal authority may also require such a person to exercise on its behalf any functions which are conferred on the appeal authority in connection with such an appeal[19], and which are specified in that person's appointment[20].

On an appeal[21], the appeal authority may allow or dismiss the appeal, either in whole or in part[22]. Where the appeal authority decides to allow such an appeal to any extent, it may do such of the following as it considers appropriate: (a) quash a remedial notice or decision to

which the appeal relates; (b) vary the requirements of such a notice; or (c) in a case where no remedial notice has been issued, issue on behalf of the relevant authority a remedial notice that could have been issued by the relevant authority on the complaint in question[23]. Where, in consequence of the appeal authority's decision on an appeal, a remedial notice is upheld or varied or corrected, the operative date of the notice is: (i) the date of the appeal authority's decision; or (ii) such later date as may be specified in its decision[24].

1 As to the meaning of 'relevant authority' see PARA 132 note 2.

2 As to the meaning of 'complainant' see PARA 131 note 8.

3 As to the meaning of 'owner' see PARA 131 note 3.

4 As to the meaning of 'occupier' see PARA 131 note 4.

5 As to the meaning of 'neighbouring land' see PARA 132 note 15.

6 'Appeal authority' means, in relation to appeals relating to hedges situated in England, the Secretary of State and, in relation to appeals relating to hedges situated in Wales, the National Assembly for Wales: Anti-social Behaviour Act 2003 s 71(7). As to the Secretary of State see PARA 129 note 7.

7 Anti-social Behaviour Act 2003 s 71(1), (2). Where such an appeal is duly made, the notice or, as the case may be, withdrawal, waiver or relaxation in question does not have effect pending the final determination or withdrawal of the appeal: s 71(6).

An appeal under s 71 must be made before the end of the period of 28 days beginning with the relevant date, or such later time as the appeal authority may allow: s 71(4). 'Relevant date': (1) in the case of an appeal against the issue of a remedial notice, means the date on which the notice was issued; and (2) in the case of any other appeal under s 71, means the date of the notification given by the relevant authority under s 68 or s 70 (see PARAS 132, 133) of the decision in question: s 71(5). As to remedial notices see PARA 133.

8 As to the meaning of 'high hedge' see PARA 131 note 1.

9 As to the meaning of 'domestic property' see PARA 131 note 5. As to the meaning of 'reasonable enjoyment of domestic property' see PARA 131 note 6.

10 Ie either or both of the issues specified in the Anti-social Behaviour Act 2003 s 68(3): see PARA 132.

11 Anti-social Behaviour Act 2003 s 71(3).

12 Ie appeals under the Anti-social Behaviour Act 2003 s 71: see the text and notes 1-11.

13 Anti-social Behaviour Act 2003 s 72(1). In exercise of this power, the High Hedges (Appeals) (Wales) Regulations 2004, SI 2004/3240, and the High Hedges (Appeals) (England) Regulations 2005, SI 2005/711, have been made.

14 As to the meaning of 'local authority' see PARA 132 note 2.

15 Ie persons falling within the Anti-social Behaviour Act 2003 s 71(2): see the text to notes 2-4.

16 Anti-social Behaviour Act 2003 s 72(2). See the High Hedges (Appeals) (Wales) Regulations 2004, SI 2004/3240; and the High Hedges (Appeals) (England) Regulations 2005, SI 2005/711. Further, regulations under the Anti-social Behaviour Act 2003 s 72 may provide for any provision of the Environment Act 1995 Sch 20 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 65) to apply in relation to a person appointed under the Anti-social Behaviour Act 2003 s 72(3) with such modifications, if any, as may be prescribed by regulations made by the appeal authority: s 72(6), (7).

17 Ie under the Anti-social Behaviour Act 2003 s 71: see the text and notes 1-11.

18 Anti-social Behaviour Act 2003 s 72(3). The appeal authority may pay a person appointed under s 72(3) such remuneration as it may determine: s 72(5).

19 Ie conferred by the Anti-social Behaviour Act 2003 s 71 or s 73 or by regulations under s 72.

20 Anti-social Behaviour Act 2003 s 72(4). Where the appeal authority so requires a person to exercise any functions on its behalf, references to the appeal authority in s 71 or s 73 or in any regulations under s 72 are to be construed accordingly: s 72(4).

21 Ie under the Anti-social Behaviour Act 2003 s 71: see the text and notes 1-11.

22 Anti-social Behaviour Act 2003 s 73(1).

23 Anti-social Behaviour Act 2003 s 73(2). On an appeal under s 71 relating to a remedial notice, the appeal authority may also correct any defect, error or misdescription in the notice if it is satisfied that the correction will not cause injustice to any person falling within s 71(2) (see the text to notes 2-4): s 73(3). Once the appeal authority has made its decision on such an appeal it must, as soon as is reasonably practicable, give a notification of the decision and, if the decision is to issue a remedial notice or to vary or correct the requirements of such a notice, send copies of the notice as issued, varied or corrected, to every person falling within s 71(2) and to the relevant authority: s 73(4).

24 Anti-social Behaviour Act 2003 s 73(5). Where the person making an appeal under s 71 against a remedial notice withdraws his appeal, the operative date of the notice is the date on which the appeal is withdrawn: s 73(6). In any case falling within s 73(5) or (6), the compliance period for the notice runs from the date which is its operative date by virtue of s 73(5) or (6) (as the case may be), and any period which may have started to run from a date preceding that on which the appeal was made is, accordingly, to be disregarded: s 73(7). As to the meaning of 'compliance period' see PARA 133 note 10.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(2) NUISANCES BETWEEN NEIGHBOURING PROPERTIES/(iii) High Hedges/135. Powers of entry.

135. Powers of entry.

Where a complaint[1] has been made or a remedial notice[2] has been issued, a person authorised by the relevant authority[3] may enter the neighbouring land[4] in order to obtain information required by the relevant authority for the purpose of determining: (1) whether the provisions relating to high hedges[5] apply to the complaint; (2) whether to issue or withdraw a remedial notice; (3) whether to waive or relax a requirement of a remedial notice; (4) whether a requirement of a remedial notice has been complied with[6]. Where an appeal has been made[7], a person authorised by the appeal authority[8], or by a person appointed to determine appeals on its behalf, may enter the neighbouring land in order to obtain information required by the appeal authority, or by the person so appointed, for the purpose of determining an appeal[9].

A person must not enter land in the exercise of a power[10] unless at least 24 hours' notice of the intended entry has been given to every occupier[11] of the land[12]. A person authorised[13] to enter land must, if so required, produce evidence of his authority before entering, and must produce such evidence if required to do so at any time while he remains on the land[14]. A person who enters land in the exercise of a power[15] may: (a) take with him such other persons as may be necessary; (b) take with him equipment and materials needed in order to obtain the information required; (c) take samples of any trees or shrubs that appear to him to form part of a high hedge[16]. If, in the exercise of a power[17], a person enters land which is unoccupied or from which all of the persons occupying the land are temporarily absent, he must on his departure leave it as effectively secured against unauthorised entry as he found it[18].

1 Ie a complaint under the Anti-social Behaviour Act 2003 Pt 8 (ss 65-84): see PARA 131 et seq.

2 As to the meaning of 'remedial notice' see PARA 133.

3 As to the meaning of 'relevant authority' see PARA 132 note 2.

4 As to the meaning of 'neighbouring land' see PARA 132 note 15.

5 As to the meaning of 'high hedge' see PARA 131 note 1.

6 Anti-social Behaviour Act 2003 s 74(1).

7 Ie under the Anti-social Behaviour Act 2003 s 71: see PARA 134.

8 As to the meaning of 'appeal authority' see PARA 134 note 6.

9 Anti-social Behaviour Act 2003 s 74(2).

10 Ie a power conferred by the Anti-social Behaviour Act 2003 s 74.

11 As to the meaning of 'occupier' see PARA 131 note 4.

12 Anti-social Behaviour Act 2003 s 74(3).

13 Ie authorised under the Anti-social Behaviour Act 2003 s 74.

14 Anti-social Behaviour Act 2003 s 74(4).

15 Ie a power conferred by the Anti-social Behaviour Act 2003 s 74.

16 Anti-social Behaviour Act 2003 s 74(5).

17 Ie a power conferred by the Anti-social Behaviour Act 2003 s 74.

18 Anti-social Behaviour Act 2003 s 74(6). A person who intentionally obstructs a person acting in the exercise of a power of entry under s 74 is guilty of an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale: s 74(7). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

136. Offences.

Where a remedial notice[1] requires the taking of any action, and that action is not taken in accordance with that notice within the compliance period[2] or, as the case may be, by the subsequent time by which it is required to be taken, every person who, at a relevant time[3], is an owner[4] or occupier[5] of the neighbouring land[6] is guilty of an offence[7]. In proceedings against a person for such an offence, it is a defence for him to show that he did everything he could be expected to do to secure compliance with the notice[8], and it is also a defence for him to show, in a case in which he is not a person to whom a copy of the remedial notice was sent[9], and is not assumed to have had knowledge of the notice at the time of the alleged offence, that he was not aware of the existence of the notice at that time[10].

Where a person is convicted of an offence[11] and it appears to the court that a failure to comply with the remedial notice is continuing, and that it is within that person's power to secure compliance with the notice, the court may, in addition to or instead of imposing a punishment, order him to take the steps specified in the order for securing compliance with the notice[12].

Where an offence[13] committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly[14].

1 As to the meaning of 'remedial notice' see PARA 133.

2 As to the meaning of 'compliance period' see PARA 133 note 10.

3 'Relevant time', in relation to action required to be taken before the end of the compliance period, means a time after the end of that period and before the action is taken and, in relation to any preventative action which is required to be taken after the end of that period, means a time after that at which the action is required to be taken but before it is taken: Anti-social Behaviour Act 2003 s 75(2). As to the meaning of 'preventative action' see PARA 133 note 9.

4 As to the meaning of 'owner' see PARA 131 note 3.

5 As to the meaning of 'occupier' see PARA 131 note 4.

6 As to the meaning of 'neighbouring land' see PARA 132 note 15.

7 Anti-social Behaviour Act 2003 s 75(1). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale: s 75(1). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

8 Anti-social Behaviour Act 2003 s 75(3).

9 Ie in accordance with a provision of the Anti-social Behaviour Act 2003 Pt 8 (ss 65-84): see PARA 131 et seq.

10 Anti-social Behaviour Act 2003 s 75(4). A person is assumed to have had knowledge of a remedial notice at any time if at that time: (1) he was an owner of the neighbouring land; and (2) the notice was at that time registered as a local land charge: s 75(5). The Law of Property Act 1925 s 198 (see **LAND CHARGES** vol 26 (2004 Reissue) PARA 616) is to be disregarded for the purposes of the Anti-social Behaviour Act 2003 s 75: s 75(6).

11 Ie under the Anti-social Behaviour Act 2003 s 75(1): see the text and notes 1-7.

12 Anti-social Behaviour Act 2003 s 75(7). Such an order must require those steps to be taken within such reasonable period as may be fixed by the order: s 75(8). Where a person fails without reasonable excuse to comply with an order under s 75(7) he is guilty of an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale: s 75(9). Where a person continues after conviction of an offence under s 75(9) or (10) to fail, without reasonable excuse, to take steps which he has been ordered to take under s 75(7), he is guilty of a further offence and is liable, on summary conviction, to a fine not exceeding one-twentieth of that level for each day on which the failure has so continued: s 75(10).

13 Ie under the Anti-social Behaviour Act 2003 Pt 8.

14 Anti-social Behaviour Act 2003 s 78(1). Where the affairs of a body corporate are managed by its members, s 78(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 78(2).

137. Enforcement.

If on a complaint made by the owner[1] of any premises, it appears to a court of summary jurisdiction that the occupier[2] of those premises is preventing the owner from complying with a remedial notice[3], the court may make an order giving the owner the right, as against all other persons interested in the land, to comply with the notice[4].

Where a remedial notice requires the taking of any action and that action is not taken in accordance with that notice within the compliance period[5] or, as the case may be, after the end of that period when it is required to be taken by the notice: (1) a person authorised by the relevant authority[6] may enter the neighbouring land[7] and take the required action; and (2) the relevant authority may recover any expenses[8] reasonably incurred by that person in doing so from any person who is an owner or occupier of the land[9]. A person may not enter land[10] unless

at least seven days' notice of the intended entry has been given to every occupier of the land[11]. A person authorised[12] to enter land must, if so required, produce evidence of his authority before entering, and must produce such evidence if required to do so at any time while he remains on the land[13].

A person who enters land[14] may: (a) use a vehicle to enter the land; (b) take with him such other persons as may be necessary; (c) take with him equipment and materials needed for the purpose of taking the required action[15]. If a person enters land[16] which is unoccupied or from which all of the persons occupying the land are temporarily absent, he must on his departure leave it as effectively secured against unauthorised entry as he found it[17].

1 As to the meaning of 'owner' see PARA 131 note 3.

2 As to the meaning of 'occupier' see PARA 131 note 4.

3 As to the meaning of 'remedial notice' see PARA 133.

4 See the Public Health Act 1936 s 289, which, by virtue of the Anti-social Behaviour Act 2003 s 76, applies with any necessary modifications for the purpose of giving an owner of land to which a remedial notice relates the right, as against all other persons interested in the land, to comply with the notice.

5 As to the meaning of 'compliance period' see PARA 133 note 10.

6 As to the meaning of 'relevant authority' see PARA 132 note 2.

7 As to the meaning of 'neighbouring land' see PARA 132 note 15.

8 Expenses recoverable under the Anti-social Behaviour Act 2003 s 77 are local land charges and are binding on successive owners of the land and on successive occupiers of it: s 77(3). Where expenses are recoverable under s 77 from two or more persons, those persons are jointly and severally liable for the expenses: s 77(4). As to local land charges see **LAND CHARGES** vol 26 (2004 Reissue) PARA 671 et seq.

9 Anti-social Behaviour Act 2003 s 77(1), (2).

10 Ie in the exercise of a power conferred by the Anti-social Behaviour Act 2003 s 77.

11 Anti-social Behaviour Act 2003 s 77(5).

12 Ie under the Anti-social Behaviour Act 2003 s 77.

13 Anti-social Behaviour Act 2003 s 77(6).

14 Ie in the exercise of a power conferred by the Anti-social Behaviour Act 2003 s 77.

15 Anti-social Behaviour Act 2003 s 77(7).

16 Ie in the exercise of a power conferred by the Anti-social Behaviour Act 2003 s 77.

17 Anti-social Behaviour Act 2003 s 77(8). A person who wilfully obstructs a person acting in the exercise of his power to enter land and take action on that land is guilty of an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale: s 77(9). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

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138. Service of documents.

A notification or other document required to be given or sent to a person[1] must be taken to be duly given or sent to him if it is served in accordance with the following provisions[2]. Such a document may be served: (1) by delivering it to the person in question[3]; (2) by leaving it at his proper address[4]; or (3) by sending it by post to him at that address[5]. Such a document may, in the case of a body corporate, be served on the secretary or clerk of that body and, in the case of a partnership, be served on a partner or a person having the control or management of the partnership business[6]. Where a document is required to be given or sent[7] to a person who is an owner[8] or occupier[9] of any land, and the name or address of that person cannot be ascertained after reasonable inquiry, the document may be served either by leaving it in the hands of a person who is or appears to be resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land[10].

A requirement[11] to send a copy of a remedial notice[12] to a person, or to notify a person[13] of the reasons for the issue of a remedial notice, is not capable of being satisfied by transmitting the copy or notification electronically[14] or by making it available on a website[15]. The delivery of any other document to a person (the 'recipient') may be effected[16] by transmitting it electronically, or by making it available on a website, but only if it is transmitted or made available in accordance with either of the follow provisions[17]: (a) the recipient has agreed that documents may be delivered to him by being transmitted to an electronic address[18] and in an electronic form specified by him for that purpose, and the document is a document to which that agreement applies and is transmitted to that address in that form[19]; or (b) the recipient has agreed that documents may be delivered to him by being made available on a website[20], the document is a document to which that agreement applies and is made available on a website[21], and the recipient is notified, in a manner agreed by him, of the presence of the document on the website, the address of the website and the place on the website where the document may be accessed[22]. Regulations may amend the provisions relating to documents in electronic form[23] by modifying: (i) the circumstances in which, and the conditions subject to which, the delivery of a document[24] may be effected by transmitting the document electronically, or making the document available on a website[25]; (ii) the day on which and the time at which documents which are transmitted electronically or made available on a website are to be treated as having been delivered[26].

1 Ie by virtue of the Anti-social Behaviour Act 2003 Pt 8 (ss 65-84): see PARA 131 et seq.

2 Anti-social Behaviour Act 2003 s 79(1).

3 Anti-social Behaviour Act 2003 s 79(2)(a).

4 Anti-social Behaviour Act 2003 s 79(2)(b). For the purposes of s 79 and of the Interpretation Act 1978 s 7 (service of documents by post: see **STATUTES** vol 44(1) (Reissue) PARA 1388) in its application to the Anti-social Behaviour Act 2003 s 79, a person's proper address is his last known address, except that: (1) in the case of a body corporate or its secretary or clerk, it is the address of the registered or principal office of that body; and (2) in the case of a partnership or person having the control or the management of the partnership business, it is the principal office of the partnership: s 79(4). For the purposes of s 79(4), the principal office of a company registered outside the United Kingdom, or a partnership carrying on business outside the United Kingdom, is its principal office within the United Kingdom: s 79(5). If a person has specified an address in the United Kingdom other than his proper address within the meaning of s 79(4) as the one at which he or someone on his behalf will accept documents of a particular description, that address is also to be treated for the purposes of s 79 and the Interpretation Act 1978 s 7 as his proper address in connection with the service on him of a document of that description: Anti-social Behaviour Act 2003 s 79(6).

5 Anti-social Behaviour Act 2003 s 79(2)(c).

6 Anti-social Behaviour Act 2003 s 79(3).

7 Ie by virtue of the Anti-social Behaviour Act 2003 Pt 8.

8 As to the meaning of 'owner' see PARA 131 note 3.

9 As to the meaning of 'occupier' see PARA 131 note 4.

10 Anti-social Behaviour Act 2003 s 79(7).

11 Ie under the Anti-social Behaviour Act 2003 Pt 8.

12 As to the meaning of 'remedial notice' see PARA 133.

13 Ie under the Anti-social Behaviour Act 2003 s 68(4): see PARA 132.

14 'Electronically' means in the form of an electronic communication, and 'electronic communication' means an electronic communication within the meaning of the Electronic Communications Act 2000 (see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (2005 Reissue) PARA 616) the processing of which on receipt is intended to produce writing: Anti-social Behaviour Act 2003 s 80(7).

15 Anti-social Behaviour Act 2003 s 80(1).

16 Ie for the purposes of the Anti-social Behaviour Act 2003 s 79(2)(a): see the text to note 3.

17 Anti-social Behaviour Act 2003 s 80(2).

18 'Electronic address' includes any number or address used for the purposes of receiving electronic communications: Anti-social Behaviour Act 2003 s 80(7).

19 Anti-social Behaviour Act 2003 s 80(3). A document which is transmitted in accordance with s 80(3) by means of an electronic communications network is, unless the contrary is proved, to be treated as having been delivered at 9 am on the working day immediately following the day on which it is transmitted: s 80(4). 'Electronic communications network' means an electronic communications network within the meaning of the Communications Act 2003 (see **TELECOMMUNICATIONS** vol 97 (2010) PARA 60); and 'working day' means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 (see **TIME** vol 97 (2010) PARA 321): Anti-social Behaviour Act 2003 s 80(7).

20 Anti-social Behaviour Act 2003 s 80(5)(a).

21 Anti-social Behaviour Act 2003 s 80(5)(b).

22 Anti-social Behaviour Act 2003 s 80(5)(c). A document made available on a website in accordance with s 80(5) is, unless the contrary is proved, to be treated as having been delivered at 9 am on the working day immediately following the day on which the recipient is notified in accordance with s 80(5)(c): s 80(6).

23 Ie the Anti-social Behaviour Act 2003 s 80: see the text and notes 11-22.

24 Ie for the purposes of the Anti-social Behaviour Act 2003 s 79(2)(a): see the text to note 3.

25 Anti-social Behaviour Act 2003 s 81(1).

26 Anti-social Behaviour Act 2003 s 81(2). Regulations under s 81 may make such consequential amendments of Pt 8 as the person making the regulations considers appropriate: s 81(3). The power to make such regulations is exercisable, in relation to documents relating to complaints about hedges situated in England, by the Secretary of State and, in relation to documents relating to complaints about hedges situated in Wales, by the Welsh Ministers: s 81(4). As to the Secretary of State see PARA 129 note 7.

(3) OTHER PARTICULAR CASES OF NUISANCE

139. Aircraft.

The common law position with respect to nuisance caused by an aircraft in flight and damage caused by an aircraft in flight, taking off or landing is, in certain circumstances, modified by the

provisions of the Civil Aviation Act 1982[1]. This Act also imposes criminal liability for dangerous flying[2].

1 See **AIR LAW** vol 2 (2008) PARA 259 et seq.

2 See **AIR LAW** vol 2 (2008) PARA 524.

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140. Animals.

The keeping of any animals[1] in such a position or in such circumstances as to cause material discomfort or annoyance to the public in general or to a particular person is a nuisance, public or private, as the case may be[2]. Thus, in one case, to keep pigs near a public place in a town was held to be an indictable nuisance[3]; and injunctions have been granted against keeping animals in such circumstances as to cause discomfort or annoyance to neighbours[4].

1 As to liability for injuries caused by animals see **ANIMALS** vol 2 (2008) PARA 747 et seq; and as to diseased animals and liability for damage caused by them see **ANIMALS** vol 2 (2008) PARA 751. As to animals straying on a highway see **ANIMALS** vol 2 (2008) PARA 754.

2 As to the distinction between public and private nuisance see PARAS 105-108.

3 *R v Wigg* (1705) 2 Ld Raym 1163.

4 See *Ball v Ray* (1873) 8 Ch App 467; *Broder v Saillard* (1876) 2 ChD 692; *Rapier v London Tramways Co* [1893] 2 Ch 588, CA (all cases of horses in stables near private property); *A-G v Squire* (1906) 5 LGR 99 (pigs in premises adjoining a village street); *Leeman v Montagu* [1936] 2 All ER 1677 (cockerels crowing in the early morning). Keeping pigs is a frequent source of complaint: see eg *Milner v Spencer* (1976) 239 Estates Gazette 573; *Bone v Seale* [1975] 1 All ER 787, [1975] 1 WLR 797, CA; *Wheeler v JJ Saunders Ltd* [1996] Ch 19, [1995] 2 All ER 697, CA. See also PARA 126 note 14.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(3) OTHER PARTICULAR CASES OF NUISANCE/141. Highways, waters and waterways.

141. Highways, waters and waterways.

Any unlawful act or omission, including a failure to repair[1] by those liable to repair, which hinders or prevents the public from passing freely, safely and conveniently along a public highway or bridge is a public nuisance[2].

In general, an owner of land adjoining a highway is not liable in nuisance for failure to repair the highway, because the duty of repair is not his and he cannot abate the nuisance[3]; but, if he is under statutory obligation to repair something in the highway, for example a grating, he may be liable in nuisance for injuries suffered by a member of the public on the highway in consequence of disrepair[4].

Any unlawful interference with the rights of the public or of owners of land in connection with waters or waterways may be a public or private nuisance according to the circumstances[5].

1 As to the liability of highway authorities for non-repair of highways and bridges see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARAS 302 et seq, 322 et seq, 859.

2 See *A-G v Gastonia Coaches Ltd* [1977] RTR 219. See further *Jacobs v London County Council* [1950] AC 361 at 375, [1950] 1 All ER 737 at 744, HL; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 302.

3 See *Penney v Berry* [1955] 3 All ER 182 at 183-184, [1955] 1 WLR 1021 at 1023-1024, CA, per Parker LJ.

4 *Macfarlane v Gwalter* [1959] 2 QB 332, [1958] 1 All ER 181, CA (liability to repair under the Public Health Acts Amendment Act 1890 s 35(1) (repealed)).

5 See eg *Radstock Co-operative and Industrial Society Ltd v Norton-Radstock UDC* [1968] Ch 605, [1968] 2 All ER 59, CA; and **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARAS 837-838, 916-919, 962; **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 197 et seq; **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 270 et seq.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(3) OTHER PARTICULAR CASES OF NUISANCE/142. Overhead obstructions.

142. Overhead obstructions.

Overhead wires and similar obstructions[1] placed without authority[2] over private land, even though not attached to such land, may constitute a private nuisance[3]. Apart from any special circumstances of danger, the existence of wires across public streets at a proper height so as not to obstruct the user of the streets does not constitute a public nuisance[4].

1 Eg ropes, banners, planks or connecting apparatus or structures.

2 For the statutory provisions relating to overhead electric lines see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1252; and for the statutory provisions relating to telegraph lines see **TELECOMMUNICATIONS** vol 97 (2010) PARA 163 et seq.

3 See *Penruddock's Case* (1598) 5 Co Rep 100b; *Batens's Case* (1610) 9 Co Rep 53b; *Pickering v Rudd* (1815) 4 Camp 219; *Fay v Prentice* (1845) 1 CB 828; *Clifton v Viscount Bury* (1887) 4 TLR 8; *Lemmon v Webb* [1894] 3 Ch 1, CA (affd [1895] AC 1, HL); *Smith v Giddy* [1904] 2 KB 448. Such wires, whether or not amounting to a nuisance in the particular circumstances, may also constitute a trespass: see eg *Kelsen v Imperial Tobacco Co (of Great Britain and Ireland) Ltd* [1957] 2 QB 334, [1957] 2 All ER 343.

4 *Wandsworth Board of Works v United Telephone Co* (1884) 13 QBD 904, CA; but cf *Finchley Electric Light Co v Finchley Urban Council* [1903] 1 Ch 437, CA, where the Court of Appeal reversed the decision of Farwell J (see [1902] 1 Ch 866) (fee simple of highway not vested in local authority which was therefore not entitled to prevent wires being stretched over it). As to the powers of highway authorities with regard to overhead wires see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARAS 223, 228.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(3) OTHER PARTICULAR CASES OF NUISANCE/143. Commons and open spaces.

143. Commons and open spaces.

A violation of rights of common may amount to a nuisance for which the commoner has his remedy at common law[1].

Conservators of commons and bodies responsible for the management of open spaces and recreation grounds may be empowered by statute to make byelaws and regulations for the prevention of nuisances in such places[2].

1 See **COMMONS** vol 13 (2009) PARA 565 et seq.

2 See **COMMONS** vol 13 (2009) PARA 609; **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARAS 648 (national park), 642 (nature reserve), 547 (town garden), 556 (public pleasure ground), 566 (country park).

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(3) OTHER PARTICULAR CASES OF NUISANCE/144. Motor vehicles, railway engines and vessels.

144. Motor vehicles, railway engines and vessels.

The emission of smoke, visible vapour, grit, sparks, ashes, cinders or oily substances from, or the causing of unnecessary or excessive noise by, motor vehicles may constitute an offence[1].

The emission of dark smoke from, or the failure to use practicable means for minimising any smoke from, railway locomotive engines or vessels may constitute an offence[2].

The way in which a vehicle is parked may also give rise to liability[3].

1 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 61; and **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 354. See also the Environmental Protection Act 1990 ss 79-82; the Clean Air Act 1993; the Noise and Statutory Nuisance Act 1993; and PARAS 115, 155-172, 225-226.

2 See the Clean Air Act 1993 ss 1, 43, 44; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 214, 216. As to sparks from railway engines see PARA 150 note 7; and **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARAS 300-301.

3 As to nuisance parking offences see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 827.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(4) DANGEROUS PROPERTY/(i) Property Inherently Dangerous/145. Dangerous property as a public nuisance.

(4) DANGEROUS PROPERTY

(i) Property Inherently Dangerous

145. Dangerous property as a public nuisance.

Property such as a house in a ruinous condition which of itself, and apart from any use to which it may be put[1], is dangerous, may be a public or private nuisance according to circumstances. If it is near to a public place and its effect is to render user of that place dangerous or inconvenient to members of the public in their exercise of rights common to all members of the public it is a public nuisance[2] which is indictable[3], and which also gives a right of action to any member of the public who suffers some special damage in consequence of it[4].

1 As to user of property for dangerous purposes see PARAS 147-154.

2 See **BOUNDARIES** vol 4(1) (2002 Reissue) PARA 955; **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 328.

3 See PARAS 105, 174.

4 See PARA 187.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(4) DANGEROUS PROPERTY/(i) Property Inherently Dangerous/146. Dangerous property as a private nuisance.

146. Dangerous property as a private nuisance.

Where inherently dangerous property does not affect members of the public in the exercise of rights common to all members of the public it is not a public nuisance, but it may be a private nuisance if it materially[1] interferes with a person's user or enjoyment of land[2], or of some right connected with land[3].

1 See PARA 112.

2 See *Todd v Flight* (1860) 9 CBNS 377 (ruinous chimneys falling on adjacent buildings). See also *Chauntler v Robinson* (1849) 4 Exch 163; *Wringe v Cohen* [1940] 1 KB 229, [1939] 4 All ER 241, CA (defective wall falling on adjacent premises); *Spicer v Smee* [1946] 1 All ER 489 (fire caused by defective electric wiring in bungalow). See further PARA 150 note 8. As to the respective liabilities of landlord and tenant to third persons in respect of want of repair see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARAS 474-476; and as to the rights of property owners in relation to defective party structures see the Party Wall etc Act 1996 ss 2-9; and **BOUNDARIES** vol 4(1) (2002 Reissue) PARA 979 et seq. As to the respective liabilities of landlord and tenant to each other in respect of repair see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 413 et seq.

3 See PARAS 101, 107.

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(ii) Dangerous User of Property

147. Dangerous operations.

The use of property for dangerous purposes[1] or operations[2] so as to cause, or be likely to cause, injury or damage to the persons or property of others may amount to a public or a private nuisance according to circumstances[3].

1 *R v Taylor* (1742) 2 Stra 1167, where the storage of gunpowder in large quantities to the danger of buildings was held an indictable nuisance; *R v Lister and Biggs* (1857) Dears & B 209, where the storage of highly inflammable substances was held to be indictable, although the utmost care was taken to avoid accidents; *Hepburn v Lordan* (1865) 2 Hem & M 345 (storage of jute in large quantities); *Crowder v Tinkler* (1816) 19 Ves 617 (gunpowder factory). See also **EXPLOSIVES** vol 17(2) (Reissue) PARA 901.

2 *R v Mutters* (1864) Le & Ca 491 (blasting); *Arnold v Furness Rly Co* (1874) 22 WR 613 (blasting); *Banister v Bigge* (1865) 34 Beav 287 (ball practice at rifle range); *Castle v St Augustine's Links Ltd* (1922) 38 TLR 615 (golf course near highway; club liable for injury caused by ball); but cf *Bolton v Stone* [1951] AC 850, [1951] 1 All ER 1078, HL (cricket ball hit from cricket ground onto highway not a nuisance); and see PARA 124 note 4.

3 As to the distinction between public and private nuisance see PARAS 105-108.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(4) DANGEROUS PROPERTY/(ii) Dangerous User of Property/148. The rule in Rylands v Fletcher.

148. The rule in *Rylands v Fletcher*.

The rule in *Rylands v Fletcher*[1] is closely related to the law of nuisance[2]. By this rule a person[3] who, for his own purposes[4], brings onto his land and collects and keeps there anything likely to do mischief[5] if it escapes[6] must keep it in at his peril and, if he fails to do so, is prima facie liable for the damage[7] which is the natural consequence of its escape[8]. Liability under the rule is strict, and it is no defence that the thing escaped without the defendant's wilful act, default or neglect[9]. It is, however, necessary that the occurrence of damage as a result of the escape should have been reasonably foreseeable before liability can be imposed[10].

The rule applies only to non-natural user of the land[11]. It does not apply: (1) to things naturally on the land[12]; (2) where the escape is due to an act of God, the act of a stranger or the default of the claimant[13]; (3) where the thing which escapes is present by consent of the person injured[14]; or (4) in certain cases where there is statutory authority[15]. The rule cannot be applied at the suit of a claimant who has no interest in the land menaced by the escape and whose only damage is financial loss[16].

The House of Lords has subjected the rule in *Rylands v Fletcher* to extensive consideration and confirmed its continued existence[17].

1 *Rylands v Fletcher* (1868) LR 3 HL 330.

2 See *Cambridge Water Co Ltd v Eastern Counties Leather plc* [1994] 2 AC 264 at 297, [1994] 1 All ER 53 at 69, HL, per Lord Goff. See also *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61, [2004] 2 AC 1 at [35], [2004] 1 All ER 589 at [35] per Lord Bingham and at [35] per Lord Hoffman.

3 As to liability under this rule see PARA 186.

4 Gas, water, electricity and inland waterways undertakers carrying out statutory duties have been held not to accumulate for their own purposes, so that the rule in *Rylands v Fletcher* did not apply: *Dunne v North Western Gas Board* [1964] 2 QB 806, [1963] 3 All ER 916, CA; and see *Boxes Ltd v British Waterways Board* (1971) 70 LGR 1, CA; sed quaere, in view of privatisation of the public utilities companies.

5 As to things likely to do mischief see PARA 150.

6 As to the need for, and meaning of, escape see PARA 151.

7 It was accepted in several older cases that under this rule damages can be recovered in respect of personal injuries: see eg *Shiffman v Venerable Order of the Hospital of St John of Jerusalem* [1936] 1 All ER 557; *Hale v Jennings Bros* [1938] 1 All ER 579. However, the House of Lords has now held, obiter, that such damages are not recoverable: see *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61, [2004] 2 AC 1 at [35], [2004] 1 All ER 589 at [35] per Lord Hoffman. See also *Read v J Lyons & Co Ltd* [1947] AC 156 at 168-169, [1946] 2 All ER 471 at 475, HL, per Viscount Simon LC, at 173-174 and 477-478 per Lord Macmillan, at 178 and 480 per Lord Porter, and at 180 and 480-481 per Lord Simonds, where doubts were expressed as to whether the rule extended to cover personal injuries. Such injuries are not recoverable under the closely related tort of private nuisance: see *Hunter v Canary Wharf Ltd* [1997] AC 655, [1997] 2 All ER 426, HL.

8 *Rylands v Fletcher* (1868) LR 3 HL 330.

9 *Rylands v Fletcher* (1868) LR 3 HL 330; *Smith v Fletcher* (1872) LR 7 Exch 305 (affd (1877) 2 App Cas 781, HL).

10 *Cambridge Water Co Ltd v Eastern Counties Leather plc* [1994] 2 AC 264, [1994] 1 All ER 53, HL (no liability for unforeseeable pollution of public water supply by seepage of spilled chemicals into the ground).

11 See PARA 149.

12 As to things naturally on the land see PARA 149.

13 See PARA 152.

14 See PARA 153.

15 See PARA 154.

16 *Cattle v Stockton Waterworks Co* (1875) LR 10 QB 453, where the escape of water made it more expensive for the plaintiff to carry out his contract to construct a tunnel; *Weller & Co v Foot and Mouth Disease Research Institute* [1966] 1 QB 569, [1965] 3 All ER 560, where the escape of a virus which damaged a third person's cattle damaged the business of the plaintiff who was a cattle auctioneer. An application to strike out a claimant's action for damages under the rule on the ground that he has no proprietary interest in the land in question may be dismissed where the claimant can establish an arguable case that the right to bring such an action should be extended in light of the Human Rights Act 1998: *McKenna v British Aluminium Ltd* [2002] Env LR 30, (2002) Times, 25 April.

17 See *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61, [2004] 2 AC 1, [2004] 1 All ER 589.

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149. Non-natural user and things naturally on land.

The rule in *Rylands v Fletcher*[1] only applies where the user of the land is non-natural[2]. It is not possible to give a precise definition of the term 'non-natural' for this purpose; the concept has undergone development and change over the years and is lacking in precision[3]. It has, however, been stated that 'ordinary user is a preferable test to natural user, making it clear that the rule in *Rylands v Fletcher* is engaged only where the defendant's use is shown to be extraordinary and unusual'[4]. While the provision of the ordinary domestic water supply in a building will not constitute non-natural use[5], the storage of substantial quantities of chemicals on industrial premises will do so notwithstanding that it takes place within an industrial community in which such activity is far from unusual[6]. The fact that an activity is in some sense for the general benefit of the community at large is therefore not in itself an objection to its being classified as non-natural for the purposes of the rule[7]. In particular, the fact that the activity provides employment in the area in which it is situated does not make it a natural user so as to render the rule in *Rylands v Fletcher* inapplicable[8].

The rule does not apply to a thing which is naturally on the land from which it escapes[9]. Such a thing may be on the land as the result of natural growth[10] or may have been brought on to the land in the course of natural use of the land[11].

1 See PARA 148.

2 *Rylands v Fletcher* (1868) LR 3 HL 330 at 339; *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61, [2004] 2 AC 1, [2004] 1 All ER 589; *Hurdman v North Eastern Rly Co* (1878) 3 CPD 168, CA (erection of mound of earth causing rainwater to escape); *Blake v Woolf* [1898] 2 QB 426, DC (water cistern); *Rickards v Lothian* [1913] AC 263, PC (ordinary water supply); *Pontardawe RDC v Moore-Gwyn* [1929] 1 Ch 656 (natural outcrop of rock); *Bartlett v Tottenham* [1932] 1 Ch 114 (water); *Howard v Furness Houlder Argentine Lines Ltd and A and R Brown Ltd* [1936] 2 All ER 781 (steam in steamship); *Collingwood v Home and Colonial Stores Ltd* [1936] 3 All ER 200, CA (ordinary electricity supply); *Western Engraving Co v Film Laboratories Ltd* [1936] 1 All ER 106, CA (large quantity of water for washing films); *Northwestern Utilities Ltd v London Guarantee and Accident Co Ltd* [1936] AC 108, PC (gas main); *Hale v Jennings Bros* [1938] 1 All ER 579, CA (chair-o-plane); *Sochacki v Sas* [1947] 1 All ER 344 (ordinary fire in domestic fireplace: see also PARA 150 note 7); *Neath RDC v Williams* [1951] 1 KB 115, [1950] 2 All ER 625, DC (obstruction of natural watercourse); *Mason v Levy Auto Parts of England Ltd* [1967] 2 QB 530, [1967] 2 All ER 62 (storage of spare motor parts and engines having regard to quantities of combustible material, manner of storage and character of neighbourhood).

3 *Cambridge Water Co Ltd v Eastern Counties Leather plc* [1994] 2 AC 264 at 308, [1994] 1 All ER 53 at 78, HL, per Lord Goff.

4 See *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61, [2004] 2 AC 1 at [11], [2004] 1 All ER 589 at [11] per Lord Bingham.

5 *Rickards v Lothian* [1913] AC 263, PC. See also *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61, [2004] 2 AC 1, [2004] 1 All ER 589 (substantial pipe carrying water to an entire block of flats still constitutes 'natural' or ordinary user so that the rule will not apply in the event of the water escaping).

6 *Cambridge Water Co Ltd v Eastern Counties Leather plc* [1994] 2 AC 264, [1994] 1 All ER 53, HL.

7 *Cambridge Water Co Ltd v Eastern Counties Leather plc* [1994] 2 AC 264 at 308, [1994] 1 All ER 53 at 79, HL, per Lord Goff.

8 *Cambridge Water Co Ltd v Eastern Counties Leather plc* [1994] 2 AC 264 at 309, [1994] 1 All ER 53 at 79, HL, per Lord Goff. It is possible that different criteria apply in wartime so that activities such as the manufacture of munitions might then qualify as natural user in the very special circumstances then prevailing (see *Read v J Lyons & Co Ltd* [1947] AC 156 at 169-170, [1946] 2 All ER 471 at 475, HL, per Viscount Simon; but cf *Rainham Chemical Works Ltd v Belvedere Fish Guano Co Ltd* [1921] 2 AC 465, HL).

9 *Rylands v Fletcher* (1868) LR 3 HL 330; and see the cases cited in notes 10-11.

10 *Giles v Walker* (1890) 24 QBD 656, DC (thistles) (but for criticism of this case see *Davey v Harrow Corpn* [1958] 1 QB 60, [1957] 2 All ER 305, CA; and for the statutory power to require destruction of injurious weeds see the Weeds Act 1959; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1029 et seq); *Pontardawe RDC v Moore-Gwyn* [1929] 1 Ch 656 (natural outcrop of rock); *Neath RDC v Williams* [1951] 1 KB 115, [1950] 2 All ER 625, DC (natural stream).

11 *Noble v Harrison* [1926] 2 KB 332 (no distinction between trees planted and those self-sown); *Rouse v Gravelworks Ltd* [1940] 1 KB 489, [1940] 1 All ER 26, CA (lake formed by rainwater in excavations); *Seligman v Docker* [1949] Ch 53, [1948] 2 All ER 887 (pheasants).

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(4) DANGEROUS PROPERTY/(ii) Dangerous User of Property/150. Things likely to do mischief.

150. Things likely to do mischief.

The rule in *Rylands v Fletcher*[1] applies only to things likely to do mischief if they escape[2]. The requirement is not easily satisfied: there must be an exceptionally high risk of danger when judged by standards relevant to the particular place and time[3]. It creates a high threshold for claimants to overcome[4]. A wide variety of things have been held to come within the rule, for example water[5], sewage[6], fires deliberately made or brought on to the land[7] or arising accidentally in a dangerous object which is likely to catch fire easily or to do damage if it escapes[8], gas[9], electricity[10], gas oil[11], acid smuts[12], fumes[13], explosives[14], decayed wire rope[15], colliery spoil[16], trees[17], vibrations[18], a flagpole[19] and a chair-o-plane[20]. A person who entertains caravan dwellers on his land may be restrained from permitting the occupiers of the land to do acts constituting nuisance[21].

In view of the dangers inherent in the production or use of atomic energy, nuclear installations and liability in respect of radiations emitting or waste discharged from them are regulated by statute[22].

1 See PARA 148.

2 *Rylands v Fletcher* (1868) LR 3 HL 330.

3 See *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61 at [10], [2004] 2 AC 1 at [10], [2004] 1 All ER 589 at [10] per Lord Bingham.

4 See *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61 at [49], [2004] 2 AC 1 at [49], [2004] 1 All ER 589 at [49] per Lord Hoffman.

5 *Rylands v Fletcher* (1868) LR 3 HL 330; *Smith v Fletcher* (1872) LR 7 Exch 305 (affd (1877) 2 App Cas 781, HL); *Crompton v Lea* (1874) LR 19 Eq 115; *Dixon v Metropolitan Board of Works* (1881) 7 QBD 418; *Snow v Whitehead* (1884) 27 ChD 588; *Charing Cross Electricity Supply Co v Hydraulic Power Co* [1914] 3 KB 772, CA; *Western Engraving Co v Film Laboratories Ltd* [1936] 1 All ER 106, CA; *A Prosser & Son Ltd v Levy* [1955] 3 All ER 577, [1955] 1 WLR 1224, CA. See also **WATER AND WATERWAYS** vol 101 (2009) PARA 667.

6 *Humphries v Cousins* (1877) 2 CPD 239; *Ballard v Tomlinson* (1885) 29 ChD 115, CA; *Foster v Warblington UDC* [1906] 1 KB 648, CA; *Jones v Llanrwst UDC* [1911] 1 Ch 393; and see *Tenant v Golding (or Goldwin)* (1704) 1 Salk 21, 360. See also *Smeaton v Ilford Corpn* [1954] Ch 450, [1954] 1 All ER 923, where the rule was considered with reference to a public authority.

7 *Jones v Festiniog Rly Co* (1868) LR 3 QB 733 (sparks from railway locomotive); *Powell v Fall* (1880) 5 QBD 597, CA; *Gunter v James* (1908) 24 TLR 868, DC (sparks from locomotives on highway); *Mulholland and Tedd Ltd v Baker* [1939] 3 All ER 253 (fire in yard of premises); see also *Beaulieu v Finglam* (1401) YB 2 Hen 4 fo 18 pt 6; *Tubervil v Stamp* (1697) 1 Salk 13 (fire on open land). The rule does not apply to ordinary fires in domestic fireplaces (*Sochacki v Sas* [1947] 1 All ER 344; *J Doltis Ltd v Isaac Braithwaite & Sons (Engineers) Ltd* [1957] 1 Lloyd's Rep 522 at 528 per Streatfield J); nor does the rule apply unless the fire in question has escaped from the premises of the occupier on whose premises it was lit (see *J Doltis Ltd v Isaac Braithwaite & Sons (Engineers) Ltd* at 527-528 per Streatfield J (damage to occupiers' premises by fire lit on premises by contractors)). For the principle that the rule applies only in cases where the user of the land is non-natural see PARA 149. As to the liability of occupiers for the consequences of fire on their premises see generally **FIRE SERVICES** vol 18(2) (Reissue) PARA 5; and as regards fires caused by railway engines see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARAS 300-301.

8 *LMS International Ltd v Styrene Packaging and Insulation Ltd* [2005] EWHC 2065 (TCC), [2006] BLR 50, [2005] All ER (D) 171 (Sep) (polystyrene blocks accidentally set on fire by the use of a 'hot wire' cutting machine); *Musgrove v Pandelis* [1919] 2 KB 43, CA (accidental fire in car in garage); see also *Mulholland and Tedd Ltd v Baker* [1939] 3 All ER 253 at 256; *Mason v Levy Auto Parts of England Ltd* [1967] 2 QB 530, [1967] 2 All ER 62; and *CR Taylor (Wholesale) Ltd v Hepworths Ltd* [1977] 2 All ER 784, [1977] 1 WLR 659. In these cases it was held that the statutory provision which exempts an occupier from liability for fires beginning accidentally on his premises (see the Fires Prevention (Metropolis) Act 1774 s 86; and **FIRE SERVICES** vol 18(2) (Reissue) PARA 5) does not protect a person who has brought on his premises an object liable to do damage if not kept under control. An occupier is similarly not protected if a fire arises accidentally on his premises from a nuisance for which he is liable (*Spicer v Smee* [1946] 1 All ER 489 (defective electric wiring by contractor)) or as a result of his negligence or the negligence of a person for whom he is responsible (see **NEGLIGENCE** vol 78 (2010) PARA 1 et seq).

9 *Northwestern Utilities Ltd v London Guarantee and Accident Co Ltd* [1936] AC 108, PC; *Hanson v Wearmouth Coal Co Ltd and Sunderland Gas Co* [1939] 3 All ER 47, CA. See also **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 944.

10 *National Telephone Co v Baker* [1893] 2 Ch 186; *Eastern and South African Telegraph Co Ltd v Cape Town Tramways Companies Ltd* [1902] AC 381, PC; *Hillier v Air Ministry* (1962) Times, 8 December (high-voltage electric cable under farmer's field). See also **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1301.

11 *Smith v Great Western Rly Co* (1926) 135 LT 112.

12 *Halsey v Esso Petroleum Co Ltd* [1961] 2 All ER 145, [1961] 1 WLR 683.

13 *West v Bristol Tramways Co* [1908] 2 KB 14, CA.

14 *Miles v Forest Rock Granite Co (Leicestershire) Ltd* (1918) 34 TLR 500, CA; *Rainham Chemical Works Ltd v Belvedere Fish Guano Co Ltd* [1921] 2 AC 465, HL; and see *Crown River Cruises Ltd v Kimbolton Fireworks Ltd* [1996] 2 Lloyd's Rep 533 (fireworks display). See also **EXPLOSIVES** vol 17(2) (Reissue) PARA 901.

15 *Firth v Bowling Iron Co* (1878) 3 CPD 254.

16 *A-G v Cory Bros & Co Ltd* [1921] 1 AC 521, HL.

17 *Crowhurst v Amersham Burial Board* (1878) 4 ExD 5; *Smith v Giddy* [1904] 2 KB 448. The rule does not apply to non-poisonous trees overhanging the highway: *Noble v Harrison* [1926] 2 KB 332. Cf the cases cited in PARA 118 note 3.

18 *Hoare & Co v McAlpine* [1923] 1 Ch 167; not followed in *Barrette v Franki Compressed Pile Co of Canada* [1955] 2 DLR 665, Ont HC.

19 *Shiffman v Venerable Order of the Hospital of St John of Jerusalem* [1936] 1 All ER 557 per Atkinson J.

20 *Hale v Jennings Bros* [1938] 1 All ER 579, CA.

21 *A-G v Corke* [1933] Ch 89. The rule did not apply to undesirable tenants in *Smith v Scott* [1973] Ch 314, [1972] 3 All ER 645, for the landlord could not be regarded as controlling them.

22 See the Nuclear Installations Act 1965; the Radioactive Substances Act 1993; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARAS 1436 et seq, 1487 et seq.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(4) DANGEROUS PROPERTY/(ii) Dangerous User of Property/151. Escape.

151. Escape.

The rule in *Rylands v Fletcher*[1] only applies where the thing which does the damage has escaped[2]. For the purposes of the rule, escape means escape from a place where the defendant has occupation or control over land to a place which is outside his occupation or control[3]. It appears that the escape need not be accidental provided that any intentional release was not deliberately aimed at the claimant, in which case it would be remediable in trespass[4].

1 See PARA 148.

2 *Rylands v Fletcher* (1868) LR 3 HL 330; *Howard v Furness Houlder Argentine Lines Ltd and A and R Brown Ltd* [1936] 2 All ER 781; *Read v J Lyons & Co Ltd* [1947] AC 156, [1946] 2 All ER 471, HL. Cf *Rigby v Chief Constable of Northamptonshire* [1985] 2 All ER 985, [1985] 1 WLR 1242.

3 *Read v J Lyons & Co Ltd* [1947] AC 156, [1946] 2 All ER 471, HL. See also *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61, [2004] 2 AC 1 at [34], [2004] 1 All ER 589 at [34] per Lord Bingham and at [76]-[77] per Lord Scott. The rule may not apply to an escape from a ship: *Miller Steamship Co Pty Ltd v Overseas Tankship (UK) Ltd, The Wagon Mound (No 2)* [1963] 1 Lloyd's Rep 402, NSW SC (appeal allowed on different grounds sub nom *Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd, The Wagon Mound (No 2)* [1967] 1 AC 617, [1966] 2 All ER 709, PC); but see *Crown River Cruises Ltd v Kimbolton Fireworks Ltd* [1996] 2 Lloyd's Rep 533 (accumulation on a vessel on a navigable river).

4 *Crown River Cruises Ltd v Kimbolton Fireworks Ltd* [1996] 2 Lloyd's Rep 533; cf *Rigby v Chief Constable of Northamptonshire* [1985] 2 All ER 985, [1985] 1 WLR 1242.

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152. Acts of God or a stranger and default of claimant.

The rule in *Rylands v Fletcher*[1] does not apply where the escape is caused by an act of God[2]. Nor does it apply if the escape was due to the act of a stranger over whose acts the defendant had no control and which was not an act which the defendant ought reasonably to have anticipated and guarded against[3]. Once the defendant has proved that the escape was caused by the act of a stranger he avoids liability unless the claimant can go on to show that the act which caused the escape was an act of the kind which the defendant could reasonably have anticipated and guarded against[4].

The rule does not apply where the escape was due to some act or default of the person who suffers the damage[5].

1 See PARA 148.

2 *Rylands v Fletcher* (1868) LR 3 HL 330; *Nichols v Marsland* (1875) LR 10 Exch 255 (affd (1876) 2 Ex D 1, CA); *Dixon v Metropolitan Board of Works* (1881) 7 QBD 418. See also *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61, [2004] 2 AC 1 at [32], [2004] 1 All ER 589 at [32] per Lord Hoffman. As to the meaning of 'act of God' see **CONTRACT** vol 9(1) (Reissue) PARA 907.

3 *Box v Jubb* (1879) 4 ExD 76; *Wilson v Newberry* (1871) LR 7 QB 31; *Rickards v Lothian* [1913] AC 263, PC; *Smith v Great Western Rly Co* (1926) 135 LT 112; *Shiffman v Venerable Order of the Hospital of St John of Jerusalem* [1936] 1 All ER 557; *Northwestern Utilities Ltd v London Guarantee and Accident Co Ltd* [1936] AC 108, PC; *Hanson v Wearmouth Coal Co Ltd and Sunderland Gas Co* [1939] 3 All ER 47, CA; *Perry v Kendricks Transport Ltd* [1956] 1 All ER 154, [1956] 1 WLR 85, CA.

4 *Perry v Kendricks Transport Ltd* [1956] 1 All ER 154 at 161, [1956] 1 WLR 85 at 93, CA, per Parker LJ. Cf *A Prosser & Sons Ltd v Levy* [1955] 3 All ER 577 at 587, [1955] 1 WLR 1224 at 1234, CA, obiter, per Singleton LJ.

5 *Rylands v Fletcher* (1868) LR 3 HL 330. See also *Dunn v Birmingham Canal Co* (1872) LR 8 QB 42, Ex Ch.

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153. Consent and common benefit.

The rule in *Rylands v Fletcher*[1] does not apply where the claimant has consented to the presence of the thing which escapes[2]. In many cases in which this exception operates the thing is kept on premises for the common benefit of the claimant and the defendant and, in some cases, consent and common benefit have been regarded as two separate and independent exceptions to the rule[3]. However, it seems that the true basis of this exception is consent and that common benefit is only an element in showing implied consent[4]. This exception is chiefly exemplified in cases concerning water[5], but there is no reason in principle why it should be confined to such cases[6].

1 See PARA 148.

2 *Carstairs v Taylor* (1871) LR 6 Exch 217; *Ross v Fedden* (1872) LR 7 QB 661; *Anderson v Oppenheimer* (1880) 5 QBD 602, CA; *Blake v Land and House Property Corpn Ltd* (1887) 3 TLR 667; *Gill v Edouin* (1894) 71 LT 762 (affd (1895) 72 LT 579, CA); *Blake v Woolf* [1898] 2 QB 426, DC; *A-G v Cory Bros & Co Ltd* [1921] 1 AC 521, HL; *Kiddle v City Business Properties Ltd* [1942] 1 KB 269, [1942] 2 All ER 216; *Peters v Prince of Wales Theatre (Birmingham) Ltd* [1943] KB 73, [1942] 2 All ER 533, CA; see also *A Prosser & Son Ltd v Levy* [1955] 3 All ER 577, [1955] 1 WLR 1224, CA, where the plaintiff did not impliedly consent to the presence of a water pipe which was, unknown to him, defective. Where the plaintiff by inference has consented to having the benefit of the defendant's watercourse but contends that he has not consented to a negligent accumulation of water, the onus is on the plaintiff to allege and prove that negligence: *Gilson v Kerrier RDC* [1976] 3 All ER 343, [1976] 1 WLR 904, CA.

3 See eg *Gill v Edouin* (1895) 72 LT 579, CA.

4 See *Peters v Prince of Wales Theatre (Birmingham) Ltd* [1943] KB 73, [1942] 2 All ER 533, CA. See also *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61, [2004] 2 AC 1 at [61], [2004] 1 All ER 589 at [61] per Lord Hobhouse.

5 See the cases cited in note 2. In many of the cases concerning water, the rule in *Rylands v Fletcher* (1868) LR 3 HL 330 would not apply because there was no non-natural user of the land: see PARA 149.

6 See *Northwestern Utilities Ltd v London Guarantee and Accident Co Ltd* [1936] AC 108 at 120, PC.

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154. Statutory authority.

Where a thing is brought onto the land under the authority of a statute it is generally necessary to prove negligence in order to establish liability[1]. If this can be established there may be liability for an escape[2] but, at least in cases involving statutory duties, there cannot be liability under the rule in *Rylands v Fletcher*[3] as such. In exceptional cases involving statutory powers, as opposed to duties, there may be liability under the rule without negligence if the statute preserves liability for nuisance[4]. It has, however, been held that for a statute conferring a power to impose strict liability for nuisance clear terms must be used[5].

1 See *Department of Transport v North West Water Authority* [1984] AC 336, [1983] 3 All ER 273, HL. See also *Geddis v Proprietors of Bann Reservoir* (1878) 3 App Cas 430, HL; *Snook v Grand Junction Waterworks Co Ltd* (1886) 2 TLR 308; *Green v Chelsea Waterworks Co* (1894) 70 LT 547; *Dunne v North Western Gas Board* [1964] 2 QB 806, [1963] 3 All ER 916, CA; *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61, [2004] 2 AC 1 at [30]-[31], [2004] 1 All ER 589 at [30]-[31] per Lord Hoffman.

2 *Northwestern Utilities Ltd v London Guarantee and Accident Co Ltd* [1936] AC 108, PC; *Markland v Manchester Corpn* [1934] 1 KB 566, CA (affd [1936] AC 360, HL); *Hardaker v Idle District Council* [1896] 1 QB 335, CA, where negligence on the part of an independent contractor alone rendered the defendants liable.

3 See PARA 148.

4 *Midwood & Co Ltd v Manchester Corpn* [1905] 2 KB 597, CA; *Charing Cross Electricity Supply Co v Hydraulic Power Co* [1914] 3 KB 772, CA. See also *Department of Transport v North West Water Authority* [1984] AC 336 at 359, [1983] 3 All ER 273 at 275-276, HL, per Lord Fraser of Tullybelton.

5 *Hammond v St Pancras Vestry* (1874) LR 9 CP 316; *Stretton's Derby Brewery Co v Mayor of Derby* [1894] 1 Ch 431; *Smeaton v Ilford Corpn* [1954] Ch 450, [1954] 1 All ER 923.

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(5) STATUTORY NUISANCE

(i) Nature of Statutory Nuisances

155. Introduction.

The Environmental Protection Act 1990 lists a number of matters which it declares to be statutory nuisances[1]. Other statutes[2] list further matters which are similarly declared to be statutory nuisances. The main purpose of this legislation is to provide summary procedures for dealing with these matters; and these procedures are in addition to any other legal remedy that may exist[3].

The Environmental Protection Act 1990 provides a self-contained code, bestowing upon local authorities and aggrieved individuals separate avenues of redress[4].

Local authorities[5] are given power to serve abatement notices[6]. Failure to comply with an abatement notice without reasonable excuse is an offence[7]. A local authority may, if it considers that criminal proceedings would afford an inadequate remedy, take civil proceedings in the High Court instead[8].

Persons aggrieved by a statutory nuisance may, after notice to the appropriate person, complain to a magistrates' court[9]. Where a magistrates' court is satisfied that the nuisance exists, or that it is likely to recur on the same premises, it may make an order requiring the abatement of the nuisance or prohibiting its recurrence and may also impose a fine[10].

Duties are imposed upon each local authority in relation to any statutory nuisance arising in its area[11]. The scope of the powers, duties and liabilities imposed by the legislation varies according to the type of statutory nuisance.

As well as potentially being a statutory nuisance[12], certain types of noise are the subject of specific statutory control[13].

1 See the Environmental Protection Act 1990 Pt III (ss 79-84). As to the meaning of 'nuisance' see PARA 159.

2 Eg the Public Health Act 1936 s 259, the Mines and Quarries Act 1954 s 151 and the London Local Authorities Act 1996 s 24: see PARA 156.

3 The principal other remedy is a claim upon a common law cause of action in nuisance: eg *Wandsworth London Borough Council v Railtrack plc* [2001] EWCA Civ 1236, [2002] QB 756, [2001] Env LR 441. See PARA 109 et seq. The non-availability of the statutory nuisance procedure does not impinge upon a local authority's power to institute a common law claim in nuisance: *A-G v Logan* [1891] 2 QB 100; *Boyce v Paddington Borough Council* [1903] 1 Ch 109.

4 *Issa v Hackney London Borough Council* [1997] 1 All ER 999, [1997] 1 WLR 956, CA; *A Lambert Flat Management Ltd v Lomas* [1981] 2 All ER 280, [1981] 1 WLR 898, DC.

5 For the purposes of the Environmental Protection Act 1990 Pt III (ss 79-84), 'local authority' means: (1) in Greater London, a London borough council, the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively; (2) in England outside Greater London, a district council; (3) in Wales, a county council or county borough council; (4) the Council of the Isles of Scilly: s 79(7) (amended by the Local Government (Wales) Act 1994 s 22(3), Sch 9 para 17(5); and the Environment Act 1995 ss 107, 120, Sch 17 para 2(b), Sch 24).

The area of a local authority which includes part of the seashore also includes for the purposes of the Environmental Protection Act 1990 Pt III the territorial sea lying seawards from that part of the shore; and subject to s 79(12) (see PARA 160 note 2) and s 81A (see PARA 208), Pt III has effect, in relation to any area included in the area of a local authority: (a) as if references to premises and the occupier of premises included respectively a vessel and the master of a vessel; and (b) with such other modifications, if any, as are prescribed in regulations made by the Secretary of State: s 79(11). As to the extent of the territorial sea see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 123 et seq; **WATER AND WATERWAYS** vol 100 (2009) PARA 31. As to the Secretary of State see PARA 129 note 7.

6 See the Environmental Protection Act 1990 s 80(1); and PARA 200. As to abatement notices see PARA 200.

7 See the Environmental Protection Act 1990 s 80(4); and PARA 203.

8 See the Environmental Protection Act 1990 s 81(5); and PARA 205.

9 See the Environmental Protection Act 1990 s 82(1), (6); and PARA 211. Strictly speaking, an 'abatement notice' refers only to a notice issued by a local authority: see s 80(1); and PARA 200.

10 See the Environmental Protection Act 1990 s 82(2); and PARA 211. As to the meaning of 'premises' see PARA 160.

11 See PARAS 162-163, 200 et seq. See also *Issa v Hackney London Borough Council* [1997] 1 All ER 999, [1997] 1 WLR 956, CA.

12 See the Environmental Protection Act 1990 s 79(1)(g), (ga); and PARA 156 heads (9), (10).

13 See the Control of Pollution Act 1974 Pt III (ss 57-74); the Noise and Statutory Nuisance Act 1993 s 8; the Noise Act 1996; and the Clean Neighbourhoods and Environment Act 2005 Pt 7 (ss 69-86). See further **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 817 et seq.

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156. List of statutory nuisances.

Under the Environmental Protection Act 1990, the following matters constitute statutory nuisances[1]:

12 (1) any premises[2] in such a state as to be prejudicial to health[3] or a nuisance[4];
13 (2) smoke[5] emitted from premises so as to be prejudicial to health or a nuisance[6];
14 (3) fumes[7] or gases[8] emitted from premises so as to be prejudicial to health or a nuisance[9];
15 (4) any dust[10], steam, smell or other effluvia[11] arising on industrial, trade or business premises[12] and being prejudicial to health or a nuisance[13];
16 (5) any accumulation or deposit which is prejudicial to health or a nuisance[14];
17 (6) any animal kept in such a place or manner as to be prejudicial to health or a nuisance[15];
18 (7) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance[16];
19 (8) artificial light emitted from premises so as to be prejudicial to health or a nuisance[17];
20 (9) noise[18] emitted from premises so as to be prejudicial to health or a nuisance[19];
21 (10) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment[20] in a street[21];
22 (11) any other matter declared by any enactment to be a statutory nuisance[22].

Other statutory nuisances include:

23 (a) any pond, pool, ditch, gutter or watercourse[23] which is so foul or in such a state as to be prejudicial to health or a nuisance[24];
24 (b) any part of a watercourse, not being a part ordinarily navigated by vessels[25] employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance or give rise to conditions prejudicial to health[26];
25 (c) any well, tank, cistern or water-butt used for the supply of water for domestic purposes which is so placed, constructed or kept as to render the water in it liable to contamination prejudicial to health[27];
26 (d) a tent, van, shed, or similar structure used for human habitation which is in such a state or so overcrowded as to be prejudicial to the health of the inmates, or the use of which, by reason of the absence of proper sanitary accommodation or otherwise, gives rise (whether on the site or on other land) to a nuisance or to conditions prejudicial to health[28];
27 (e) a shaft or outlet of an abandoned mine, or of a mine which has not been worked for 12 months, being a shaft or outlet the surface entrance to which is not provided with a properly maintained efficient enclosure, barrier, plug or other device so designed and constructed as to prevent any person from accidentally falling down the shaft or entering the outlet[29];

28 (f) a quarry which is not provided with an efficient and properly maintained barrier so designed and constructed as to prevent any person from accidentally falling into the quarry and which, by reason of its accessibility from a highway or place of public resort, constitutes a danger to the public[30];

29 (g) within a London borough, smoke, fumes or gases emitted from any vehicle[31], machinery or equipment on a street so as to be prejudicial to health or a nuisance, other than from any vehicle, machinery or equipment being used for fire brigade purposes[32].

No matter constitutes a statutory nuisance to the extent that it consists of, or is caused by, any land being in a contaminated state[33].

1 See the Environmental Protection Act 1990 s 79(1). This provision is expressed to be subject to s 79(1A)-(6A): see s 79(1) (amended by the Environment Act 1995 s 120, Sch 22 para 89). As to the meaning of 'nuisance' see PARA 159.

2 As to the meaning of 'premises' see PARA 160.

3 As to the meaning of 'prejudicial to health' see PARA 158.

4 Environmental Protection Act 1990 s 79(1)(a). See further PARA 164.

5 As to the meaning of 'smoke' see PARA 166 note 1.

6 Environmental Protection Act 1990 s 79(1)(b). See further PARA 166.

7 As to the meaning of 'fumes' see PARA 167.

8 As to the meaning of 'gas' see PARA 167.

9 Environmental Protection Act 1990 s 79(1)(c). See further PARA 167.

10 As to the meaning of 'dust' see PARA 168 note 1.

11 As to the meaning of 'effluvia' see PARA 168.

12 'Industrial, trade or business premises' means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process; and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing: Environmental Protection Act 1990 s 79(7). Sewage treatment works are 'premises' for the purposes of s 79(1)(d) (see the text to note 13): see *Hounslow London Borough Council v Thames Water Utilities Ltd* [2003] EWHC 1197 (Admin), [2004] QB 212.

For the purposes of the Environmental Protection Act 1990 Pt III (ss 79-84), 'relevant industrial, trade or business premises' means premises that are industrial, trade or business premises as defined in s 79(7), but excluding:

1 (1) land used as arable, grazing, meadow or pasture land;

2 (2) land used as osier land, reed beds or woodland;

3 (3) land used for market gardens, nursery grounds or orchards;

4 (4) land forming part of an agricultural unit, not being land falling within any of heads (1)-(3), where the land is of a description prescribed by regulations made by the appropriate person; and

5 (5) land included in a site of special scientific interest, as defined in the Wildlife and Countryside Act 1981 s 52(1) (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 674),

and excluding land covered by, and the waters of, any river or watercourse, that is neither a sewer nor a drain, or any lake or pond: Environmental Protection Act 1990 s 79(7C) (s 79(7C), (7D) added by the Clean Neighbourhoods and Environment Act 2005 s 101(1), (5)). At the date at which this volume states the law these provisions had not been brought into force in relation to Wales except for limited purposes: see the Clean Neighbourhoods and Environment Act 2005 (Commencement No 1 and Savings) (Wales) Order 2006, SI

2006/768, art 3. For the purposes of the Environmental Protection Act 1990 s 79(7C), 'agricultural' has the same meaning as in the Agriculture Act 1947 s 109 (see **AGRICULTURAL LAND** vol 1 (2008) PARA 324); 'agricultural unit' means land which is occupied as a unit for agricultural purposes; 'drain' has the same meaning as in the Water Resources Act 1991 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 138); 'lake or pond' has the same meaning as in s 104 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 289); 'sewer' has the same meaning as in the Water Resources Act 1991 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 138): Environmental Protection Act 1990 s 79(7D) (as so added).

The land prescribed for the purposes of head (4) is land in respect of which payments are made under any of the specified land management schemes: see the Statutory Nuisances (Insects) Regulations 2006, SI 2006/770. In relation to Wales, land prescribed for the purposes of head (4) is land in respect of which payments are made under any of the land management schemes described by the Statutory Nuisances (Miscellaneous Provisions) (Wales) Regulations 2007, SI 2007/117.

13 Environmental Protection Act 1990 s 79(1)(d). See further PARA 168.

14 Environmental Protection Act 1990 s 79(1)(e). See further PARA 169.

15 Environmental Protection Act 1990 s 79(1)(f). See further PARA 170.

16 Environmental Protection Act 1990 s 79(1)(fa) (added by the Clean Neighbourhoods and Environment Act 2005 s 101(1), (2)). See further PARA 171.

17 Environmental Protection Act 1990 s 79(1)(fb) (added by the Clean Neighbourhoods and Environment Act 2005 s 102(1), (2)). See further PARA 172.

18 As to the meaning of 'noise' see PARA 165 note 7.

19 Environmental Protection Act 1990 s 79(1)(g). See further PARA 165.

20 'Equipment' includes a musical instrument: Environmental Protection Act 1990 s 79(7) (definition added by the Noise and Statutory Nuisance Act 1993 s 2(4)).

21 Environmental Protection Act 1990 s 79(1)(ga) (added by the Noise and Statutory Nuisance Act 1993 s 2). See further PARA 165. 'Street' means a highway and any other road, footway, square or court that is for the time being open to the public: Environmental Protection Act 1990 s 79(7) (definition added by the Noise and Statutory Nuisance Act 1993 s 2(4)). An open market, visited by a section of the public, is a 'square' and is 'open to the public': *Tower Hamlets London Borough Council v Creitzman* (1984) 148 JP 590, 83 LGR 72, DC.

22 Environmental Protection Act 1990 s 79(1)(h). See eg *R (on the application of Robinson) v Torridge District Council* [2006] EWHC 877 (Admin), [2006] 3 All ER 1148, [2007] 1 WLR 871 (statutory nuisance under the Public Health Act 1936).

23 'Watercourse' means water flowing in a channel between banks, more or less defined, although such channel may occasionally be dry: *R v Inhabitants of Oxfordshire* (1830) 8 LJOSKB 354; *Smith v Barnham* (1876) 34 LT 774. 'Watercourse' does not include a river or estuary: *R v Falmouth and Truro Port Health Authority, ex p South West Water Services* (1999) 163 JP 589, [1999] EGCS 62; affd [2001] QB445, [2000] 3 All ER 306, CA. For these purposes, 'watercourse' includes canals closed for navigation and any inland waterway in England and Wales which is not a commercial or cruising waterway: see the Transport Act 1968 s 108; and **WATER AND WATERWAYS** vol 101 (2009) (Reissue) PARA 715.

24 Public Health Act 1936 s 259(1)(a) (s 259(1) amended by the Environmental Protection Act 1990 s 162(1), Sch 15 para 4(1), (3)).

25 'Vessel' has the same meaning as 'ship' in the Merchant Shipping Act 1995 (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229): see the Public Health Act 1936 s 343(1) (definition amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 15).

26 Public Health Act 1936 s 259(1)(b) (as amended: see note 24).

In the case of an alleged nuisance under s 259(1)(b), nothing in s 259(1) is to be deemed to impose any liability on any person other than the person by whose act or default the nuisance arises or continues: s 259(1) proviso (as amended: see note 24). Accordingly, proceedings cannot be taken against a landowner, riparian owner or other person under these provisions unless it can be established that the recipient of the notice was the person by whose act, default or sufferance the nuisance arises or continues. Thus a landowner, having no duty in this respect, is not responsible for a natural watercourse which has become silted up from natural causes: *Hodgson v York Corpn* (1873) 28 LT 836; *Neath RDC v Williams* [1951] 1 KB 115, [1950] 2 All ER 625, DC (but note that recent developments in the common law relating to liability for nuisances emanating from natural causes may have made the decision in *Neath RDC v Williams* open to question: see eg criticism by O'Connor J at first

instance in *Leakey v National Trust for Places of Historic Interest and Natural Beauty* [1978] 3 All ER 234 at 245-246). Similarly a person has been held not liable to repair a silted up drain, although he may have had the right to do so, as his failure to repair the drain did not amount to an 'act or default': *Nathan v Rouse* [1905] 1 KB 527, DC. However, if obstructions are caused by other than natural causes, and the circumstances are such that the riparian owner is aware, or ought to be aware in all the circumstances of the existence of a nuisance, he may be liable at common law in damages to a claimant who has been thereby harmed: *Sedleigh-Denfield v O'Callaghan* [1940] AC 880, [1940] 3 All ER 349, HL. 'Choked' in the Public Health Act 1936 s 259(1)(b) could include a situation where there was an obstruction or an artificial obstruction in a watercourse (in this case the piers of a bridge in times of extreme flooding) causing a statutory nuisance: see *R (on the application of Robinson) v Torridge District Council* [2006] EWHC 877 (Admin), [2006] 3 All ER 1148, [2007] 1 WLR 871. A person through whose land a ditch passes may be compelled to carry out work for the clearance of that ditch: see the Land Drainage Act 1991 s 28(2)(a); and **WATER AND WATERWAYS** vol 101 (2009) PARA 588.

27 See the Public Health Act 1936 s 141 (amended by the Environmental Protection Act 1990 s 162(1), Sch 15 para 4(1), (2)); and **WATER AND WATERWAYS** vol 101 (2009) PARA 402. For these purposes, no account is to be taken of any radioactivity possessed by any substance or article: see the Radioactive Substances Act 1993 s 40, Sch 3 Pt I para 1; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1463.

28 See the Public Health Act 1936 s 268(2) (amended by the Environmental Protection Act 1990 Sch 15 para 4(1), (4)). See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 965.

29 See the Mines and Quarries Act 1954 s 151(1), (2)(a) (amended by the Environmental Protection Act 1990 Sch 15 para 5); and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 530. As to the meanings of 'shaft' and 'mine' see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 5. Where the mine is not a mine of coal, stratified ironstone, shale or fireclay and has not been worked for the purposes of getting minerals or mineral products since 9 August 1872, this only applies where the shaft or outlet constitutes a danger to members of the public by reason of its accessibility from a highway or place of public resort: see the Mines and Quarries Act 1954 s 151(2)(b); and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 530. As to the meaning of 'minerals' see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 12.

30 See the Mines and Quarries Act 1954 s 151(2)(c); and **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 530. As to the meaning of 'quarry' see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARA 6.

31 This does not apply in relation to smoke, fumes or gases emitted from the exhaust system of a vehicle: Environmental Protection Act 1990 s 79(6B) (added by the London Local Authorities Act 1996 s 24). 'Vehicle' means a mechanically propelled vehicle intended or adapted for use on roads, whether or not it is in a fit state for such use, and includes any trailer intended or adapted for use as an attachment to such a vehicle, any chassis or body, with or without wheels, appearing to have formed part of such a vehicle or trailer, and anything attached to such a vehicle or trailer: Environmental Protection Act 1990 s 79(7) (definition added by the London Local Authorities Act 1996 s 24).

32 Environmental Protection Act 1990 s 79(1)(gb) (added by the London Local Authorities Act 1996 s 24). As to fire brigades see **FIRE SERVICES** vol 18(2) (Reissue) PARA 35 et seq.

33 Environmental Protection Act 1990 s 79(1A) (added by the Environment Act 1995 Sch 22 para 89). Land is in a contaminated state for these purposes if, and only if, it is in such a condition, by reason of substances in, on or under the land, that: (1) harm is being caused or there is a possibility of harm being caused; or (2) pollution of controlled waters is being, or is likely to be, caused: Environmental Protection Act 1990 s 79(1B) (added by the Environment Act 1995 Sch 22 para 89). See further **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 760 et seq.

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157. Related health hazards.

In addition to declaring certain matters to be statutory nuisances[1], the Public Health Act 1936 gives local bodies the following powers to deal with certain other matters that may be a nuisance or a threat to public health:

30 (1) a power given to a local authority[2] to apply to a court to close or cut off or restrict the use of water in or obtained from a well, tank or other source of supply not vested in the authority, being water which is, or is likely to be, used for domestic purposes or in the preparation of food or drink for human consumption, if the local authority is of opinion that the water is, or is likely to become, so polluted as to be prejudicial to health[3];

31 (2) a power given to a parish council and a local authority[4]: (a) to deal with any pond, pool, ditch, gutter or place containing or used for the collection of any drainage, filth, stagnant water or matter likely to be prejudicial to health, by draining, cleansing or covering it, or otherwise preventing it from being prejudicial to health[5]; (b) to execute any works, including works of maintenance or improvement, incidental to or consequential on any exercise of the power in head (a) above[6]; and (c) to contribute towards the expenses incurred by any other person in doing anything mentioned in these provisions[7];

32 (3) a power given to a local authority to apply to a court for an order for the cleansing of a watercourse or ditch which forms the boundary between the district of the local authority and another local authority or which lies in the adjoining district but near to that boundary, where the watercourse or ditch is so foul and offensive as injuriously to affect the district of the complainant local authority[8].

A local authority may, if it thinks fit, contribute the whole or part of the expenses of the execution of works for these purposes, or it may, by agreement with any owner or occupier, itself execute any such works which the owner or occupier is required or entitled to execute[9].

1 As to statutory nuisances see PARA 156. As to the meaning of 'nuisance' see PARA 159.

2 For the purposes of the Public Health Act 1936, 'local authority' means the council of a district or London borough, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple, but, in relation to Wales, means the council of a county or county borough: see ss 1(2), 343(1) (s 1 substituted by the Local Government Act 1972 s 180, Sch 14 Pt I para 1; and amended by the Local Government (Wales) Act 1994 s 22(3), Sch 9 para 3(1), (2)).

3 See the Public Health Act 1936 s 140(1), (2); and **WATER AND WATERWAYS** vol 100 (2009) PARA 402. The application is made to a magistrates' court and thereupon a summons may be issued to the owner or occupier of the premises to which the source of supply belongs or to any other person alleged in the application to have control of it: see s 140(1). The court may order the source of supply to be permanently or temporarily closed or cut off, or it may order that the water is to be used for certain purposes only, or it may make such other order as appears to the court to be necessary to prevent injury or danger to the health of persons using the water, or consuming food or drink prepared with it or from it: see s 140(2). The court must hear any user of the water who claims to be heard, and may cause the water to be analysed at the cost of the local authority: s 140(2). If a person fails to comply with an order made under these provisions, the court may, on the application of the local authority, authorise the authority to do whatever may be necessary for giving effect to the order; and any expenses reasonably incurred by the authority in so doing may be recovered from the person in default: s 140(3).

As to the meaning of 'prejudicial to health' see PARA 158.

4 Without prejudice to its right to take action in respect of any statutory nuisance, a local authority may exercise any powers which a parish council may exercise under the Public Health Act 1936 s 260: s 260(2).

5 Public Health Act 1936 s 260(1)(a). In dealing with the matter, the parish council or local authority must not interfere with any private right or with any public drainage, sewerage or sewage disposal works: s 260(1)(a).

6 Public Health Act 1936 s 260(1)(b).

7 Public Health Act 1936 s 260(1)(c).

8 See the Public Health Act 1936 s 261. The application is made to a magistrates' court having jurisdiction in the area where the watercourse or ditch is situated: see s 261. The court may make such order as it deems reasonable with respect to the cleansing of the watercourse or ditch and the execution of any work appearing

to the court to be necessary: s 261. The court may also make an order with respect to the persons by whom the work is to be executed, and the persons by whom, and the proportions in which, the costs of the works are to be paid: s 261.

9 Public Health Act 1936 s 265.

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158. Meaning of 'prejudicial to health'.

Within most of the defined classes of statutory nuisance there is a requirement that the matter complained of be prejudicial to health or a nuisance[1]. Although these are alternatives, a statutory nuisance may be both prejudicial to health and a nuisance at common law[2].

'Prejudicial to health' means injurious, or likely to cause injury, to health[3]. The phrase has consistently been limited to the adverse effects on people's health of filthy or unwholesome premises and the like: in particular, the risk of disease or illness[4]. It is not necessary to consider whether those matters affect personal comfort[5]. Whether something is injurious to health is an objective matter[6]. It is not always essential for medical evidence to be adduced in order to prove that a matter is prejudicial to health[7]. The fact that premises have been declared unfit for human habitation or that a landlord is excused from liability for particular damage does not determine the existence of a statutory nuisance[8], and comparisons with the standards imposed by other legislation are best avoided[9].

1 As to statutory nuisances see PARA 156. As to the meaning of 'nuisance' see PARA 159. In *Salford City Council v McNally* [1976] AC 379 at 389, [1975] 2 All ER 860 at 864, HL, per Lord Wilberforce, it was held that in dealing with a complaint under earlier legislation with similar wording, magistrates must follow the wording of the Act and ask themselves: (1) 'is the state of the premises such as to be injurious . . . to health?'; or (2) 'is it a nuisance?', and that if the answer to either question is in the affirmative they should make a nuisance order (now an abatement order: see PARA 211).

2 *Malton Board of Health v Malton Manure Co* (1879) 4 ExD 302, 49 LJMC 90; *Bishop Auckland Local Board v Bishop Auckland Iron and Steel Co Ltd* (1882) 10 QBD 138, 52 LJMC 38; *Houldershaw v Martin* (1885) 1 TLR 323, DC.

3 Public Health Act 1936 s 343(1); Building Act 1984 s 126; Environmental Protection Act 1990 s 79(7). See also *National Coal Board v Neath Borough Council* [1976] 2 All ER 478, sub nom *National Coal Board v Thorne* [1976] 1 WLR 543, DC; *Salford City Council v McNally* [1976] AC 379, [1975] 2 All ER 860, HL (overruling *Betts v Penge UDC* [1942] 2 KB 154, [1942] 2 All ER 61, DC, where it was held that an interference with the personal comfort of the tenant, without showing prejudice to health, was sufficient for the purposes of a statutory nuisance); *Great Western Rly Co v Bishop* (1872) LR 7 QB 550, DC (water dripping from under a railway bridge onto a public highway held not to be prejudicial to health because it could not be said to affect health except in a very indirect and remote manner); *Coventry City Council v Cartwright* [1975] 2 All ER 99, [1975] 1 WLR 845, DC (inert building waste deposited on a vacant site which could cause injury held not to be a matter prejudicial to health).

4 *R v Bristol City Council, ex p Everett* [1999] 2 All ER 193, [1999] 1 WLR 1170, CA (tenant of a house which had a steep internal staircase suffered from a back injury and experienced difficulty in negotiating the stairs and feared that she might fall and injure herself; held that although the premises were in such a state as to create a likelihood of accident causing personal injury they were not, as a matter of law, capable of giving rise to a statutory nuisance within the Environmental Protection Act 1990 s 79(1)(a) (see PARA 156 head (1))). For premises to fall within the Environmental Protection Act 1990 s 79(1)(a) as being in such a state as to be prejudicial to health, there must be some feature in the premises that is itself prejudicial; an unsatisfactory arrangement of rooms not in themselves insanitary does not fall within the provision: *Birmingham City Council v Oakley* [2001] 1 AC 617, [2001] 1 All ER 385, HL (where the design of a council flat required those using the water closet to wash their hands in a separate bathroom basin, this was held not to constitute a statutory nuisance in itself, reversing the decision at first instance); *R (on the application of Vella) v Lambeth London*

Borough Council [2005] EWHC 2473 (Admin), (2005) Times, 23 November, [2005] All ER (D) 171 (Nov) (lack of adequate sound insulation did not cause premises to be in such a state as to be prejudicial to health).

5 *Salford City Council v McNally* [1976] AC 379 at 389, [1975] 2 All ER 860 at 864, HL, per Lord Wilberforce. Cf *Wivenhoe Port Ltd v Colchester Borough Council* [1985] JPL 175, where it was held that actual prejudice to health was not required and that it was sufficient that there had been a material interference with the personal comfort of the residents in the sense of materially affecting their well-being.

6 *Cunningham v Birmingham City Council* [1998] Env LR 1, (1997) 96 LGR 231, DC (council not required to carry out works required to meet the special health needs of the complainant's autistic son); applied in *R (on the application of Anne) v Test Valley Borough Council* [2001] EWHC 1019 (Admin), [2001] 48 EG 127 (CS), [2001] All ER (D) 245 (Nov). See also *Hall v Manchester Corpn* (1915) 84 LJ Ch 732, HL; *Southwark London Borough Council v Ince* (1989) 21 HLR 504 (road and rail noise penetrating a flat could make premises prejudicial to health). However, *Southwark London Borough Council v Ince* has been doubted in *R (on the application of Vella) v Lambeth London Borough Council* [2005] EWHC 2473 (Admin), (2005) Times, 23 November, [2005] All ER (D) 171 (Nov) (see note 4). In Crown Court proceedings, it has been ruled that sleeplessness may amount to an injury to health: *Lewisham London Borough Council v Fenner* (1995) 248 ENDS Report 44.

7 *O'Toole v Knowsley Metropolitan Borough Council* [1999] EHLR 420, [1999] Env LR D29, where it was held that environmental health officers were able to give opinion evidence that premises were prejudicial to health. It is not necessary for the person to have a medical qualification; it is enough that the person has experience of the relationship between the thing complained of and injury to health: *Southwark London Borough Council v Simpson* [2000] EHLR 43, (1998) 31 HLR 725. In *Patel v Mehtab* (1980) 5 HLR 78, DC, it was held that where an environmental health officer and a public health adviser had given uncontroverted evidence that premises were injurious to health, magistrates could not simply substitute their view for those of the experts. It is not permissible to rely on hearsay evidence of injury to health: *Southwark London Borough Council v Simpson*. The fact that an expert is employed by one of the parties to proceedings under the Environmental Protection Act 1990 does not prevent the court from relying on him as an expert: *Field v Leeds City Council* (1999) 32 HLR 618, [2000] 1 EGLR 54, CA.

8 *Salford City Council v McNally* [1976] AC 379 at 389, [1975] 2 All ER 860 at 864, HL, per Lord Wilberforce (premises declared unfit for human habitation under the Housing Act 1957); *Turley v King* [1944] 2 All ER 489, DC (landlord excused by the Landlord and Tenant (War Damage) Act 1939 from repairing defective roof of house caused by enemy action; but nevertheless liable to abate the statutory nuisance caused by it).

9 *Salford City Council v McNally* [1976] AC 379 at 395, [1975] 2 All ER 860 at 869, HL, per Lord Edmund-Davies.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(5) STATUTORY NUISANCE/(i) Nature of Statutory Nuisances/159. Meaning of 'nuisance'.

159. Meaning of 'nuisance'.

The term 'nuisance' is not defined in the Environmental Protection Act 1990. The term is to be understood in its common law sense, requiring either a private nuisance or a public nuisance[1]. A matter may at once be both a private nuisance as well as a public nuisance[2].

A public nuisance at common law is an act or omission that inflicts damage, injury or inconvenience on all the Queen's subjects or on all members of a class who come within the sphere or neighbourhood of its operation[3]. However, not every common law public nuisance amounts to a statutory nuisance; only those that interfere with the personal comfort of, or are injurious to the health of, the public amount to a statutory nuisance[4].

A private nuisance at common law is an act or omission generally connected with the user or occupation of land that interferes with another person's use or enjoyment of land or of some right connected with land[5]. Thus defects in premises which affect only the occupants of those premises cannot amount to a nuisance[6]. In most instances a private nuisance will involve an interference for a substantial length of time[7], but for the purposes of statutory nuisance a single event may amount to a nuisance[8]. It is not necessary to prove annoyance to any particular

person or injury to any particular property[9]. Impairment of visual amenity does not amount to a nuisance[10]. Common law defences to a claim in nuisance are not relevant in proceedings for statutory nuisance[11].

Statutory nuisances were at one time thought to be confined to nuisances from private sources or nuisances caused on private property, and not to embrace nuisances arising from public property such as sewers or sewage works constructed by local authorities[12], but public authorities do not now possess any special immunity[13] and proceedings are commonly taken in respect of nuisances in properties owned by local authorities[14].

Whether there is a nuisance or not is a question of fact; and the fact that the matter complained of continued for a period of several days may be taken into consideration[15].

1 *National Coal Board v Neath Borough Council* [1976] 2 All ER 478 at 482, sub nom *National Coal Board v Thorne* [1976] 1 WLR 543 at 548, DC, per Watkins J; *Salford City Council v McNally* [1976] AC 379, [1975] 2 All ER 860, HL. See PARAS 101-108.

2 *A-G (on the relation of Glamorgan County Council and Pontardawe RDC) v PYA Quarries* Ltd [1957] 2 QB 169, [1957] 1 All ER 894, CA; *National Coal Board v Neath Borough Council* [1976] 2 All ER 478 at 481, sub nom *National Coal Board v Thorne* [1976] 1 WLR 543 at 547, DC, per Watkins J.

3 See PARA 105.

4 *National Coal Board v Neath Borough Council* [1976] 2 All ER 478 at 481, sub nom *National Coal Board v Thorne* [1976] 1 WLR 543 at 548, DC, per Watkins J.

5 See PARA 107. See also *East Northamptonshire District Council v Fossett* [1994] Env LR 388, DC (where an all night rave was held to constitute a noise nuisance).

6 *National Coal Board v Neath Borough Council* [1976] 2 All ER 478, sub nom *National Coal Board v Thorne* [1976] 1 WLR 543, DC (the owners of premises allowed them to fall into a state of disrepair; it was held that the premises did not constitute a statutory nuisance because they were not in such a state as to be prejudicial to health and the matter complained of affected only the persons occupying the premises from which that matter arose). See also *Great Western Rly Co v Bishop* (1872) LR 7 QB 550 (water falling from a bridge onto a highway held not to be a statutory nuisance because it was not injurious to public health or the permanent comfort of the public); *Malton Board of Health v Malton Manure Co* (1879) 4 Ex D 302 at 307 per Stephen J (effluvia caused sick people to become worse); *Gaskell v Bayley* (1874) 30 LT 516 (smoke); *Banbury Urban Sanitary Authority v Page* (1881) 8 QBD 97, DC (swine producing offensive effluvia held to be a statutory nuisance even though there was no injury to health); *Bishop Auckland Local Board v Bishop Auckland Iron and Steel Co Ltd* (1882) 10 QBD 138, DC (fumes from cinders and ashes not causing injury to health held to be a statutory nuisance because it interfered with the personal comfort of those living in the neighbourhood); *Houldershaw v Martin* (1885) 1 TLR 323, DC (fish frying); *Betts v Penge UDC* [1942] 2 KB 154, [1942] 2 All ER 61, DC (removal of a window and a door by a landlord held to constitute a statutory nuisance because it interfered with the personal comfort of the tenants; overruled by *National Coal Board v Neath Borough Council* in so far as it held that an interference with the personal comfort of the tenant, without showing prejudice to health, was sufficient for the purposes of a statutory nuisance); *Salford City Council v McNally* [1976] AC 379, [1975] 2 All ER 860, HL (house found to be unfit for human habitation does not automatically give rise to a nuisance); *Turley v King* [1944] 2 All ER 489, DC (defective roof of house caused by enemy action); *Coventry City Council v Cartwright* [1975] 2 All ER 99, [1975] 1 WLR 845, DC (visual impact of inert building waste deposited on a vacant site could not constitute a nuisance).

7 *National Coal Board v Neath Borough Council* [1976] 2 All ER 478, sub nom *National Coal Board v Thorne* [1976] 1 WLR 543, DC.

8 *National Coal Board v Neath Borough Council* [1976] 2 All ER 478, sub nom *National Coal Board v Thorne* [1976] 1 WLR 543, DC. See also *East Northamptonshire District Council v Fossett* [1994] Env LR 388, DC (where a single all night rave was held to constitute a noise nuisance).

9 *South London Electric Supply Corpn v Perrin* [1901] 2 KB 186, DC.

10 *Coventry City Council v Cartwright* [1975] 2 All ER 99, [1975] 1 WLR 845, DC.

11 *A Lambert Flat Management Ltd v Lomas* [1981] 2 All ER 280, [1981] 1 WLR 898, DC.

12 *R v Parlby* (1889) 22 QBD 520, DC; *Fulham Vestry v LCC* [1897] 2 QB 76, DC. As to consideration of the applicability see *Hounslow London Borough Council v Thames Water Utilities Ltd* [2003] EWHC 1197 (Admin), [2004] QB 212; *East Riding of Yorkshire Council v Yorkshire Water Services Ltd* [2001] Env LR 7.

13 It was held that a local authority could be made a defendant in *R v Epping (Waltham Abbey) Justices, ex p Burlinson* [1948] 1 KB 79, [1947] 2 All ER 537, DC. See also *Coventry City Council v Doyle* [1981] 2 All ER 184, [1981] 1 WLR 1325, DC. For an example of proceedings against a local authority see *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149, [1953] 1 All ER 179, CA.

14 See eg *Pearshouse v Birmingham City Council* [1999] Env LR 536, 31 HLR 756.

15 *South London Electric Supply Corpn v Perrin* [1901] 2 KB 186, DC.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(5) STATUTORY NUISANCE/(i) Nature of Statutory Nuisances/160. Meaning of 'premises'.

160. Meaning of 'premises'.

For the purposes of Part III of the Environmental Protection Act 1990[1], 'premises' includes land and any vessel[2].

The ordinary meaning of premises extends to a street, a heap of earth or a houseboat[3]. The term has been held to extend to a bridleway[4].

Sewage disposal works are now considered to be 'premises' in respect of some nuisances, but public sewers are excluded from the term[5].

1 Ie the Environmental Protection Act 1990 Pt III (ss 79-84).

2 Environmental Protection Act 1990 s 79(7) (definition amended by the Noise and Statutory Nuisance Act 1993 s 10(1); and the Environment Act 1995 s 107, Sch 17 para 2(b)(ii)). This definition is subject to the Environmental Protection Act 1990 s 79(12) and s 81A(9) (see PARA 208). A vessel powered by steam reciprocating machinery is not a vessel to which Pt III applies: s 79(12).

The provisions of Pt III apply in relation to tents, vans, sheds and similar structures used for human habitation as they apply in relation to other premises and as if a tent, van, shed or similar structure used for human habitation were a house or a building so used: Public Health Act 1936 s 268(1) (amended by the Environmental Protection Act 1990 s 162(1), Sch 15 para 4(1), (4)). See *R v Parlby* (1889) 22 QBD 520, DC; *Bainbridge v Chertsey Urban Council* (1914) 84 LJ Ch 626; *Fulham Vestry v LCC* [1897] 2 QB 76, DC; *West Mersea UDC v Fraser* [1950] 2 KB 119, [1950] 1 All ER 990 (houseboat); *Gardiner v Sevenoaks RDC* [1950] 2 All ER 84, [1950] WN 260, DC (caves).

3 *A-G (ex rel Strand District Board of Works) v Kirk* (1896) 12 TLR 514, CA (where a builder had left a trench, which had filled with water, across a street and left a footpath without proper paving); *Brown v Eastern and Midlands Rly Co* (1889) 22 QBD 391, DC (where a heap of earth that was causing horses to shy was held to constitute a nuisance); *West Mersea UDC v Fraser* [1950] 2 KB 119, [1950] 1 All ER 990, DC (where a houseboat was held to be 'premises' for the purposes of entitlement to access to the domestic water supply).

4 *Westley v Hertfordshire County Council* [1998] 2 PLR 72, 76 P & CR 518, DC.

5 *R v Parlby* (1889) 22 QBD 520, DC; *Bainbridge v Chertsey Urban Council* (1914) 84 LJ Ch 626; *Fulham Vestry v LCC* [1897] 2 QB 76, DC. Sewage treatment works are 'premises' for the purposes of the Environmental Protection Act 1990 s 79(1)(d) (see PARA 156 head (4)): see *Hounslow London Borough Council v Thames Water Utilities Ltd* [2003] EWHC 1197 (Admin), [2004] QB 212, [2003] 3 WLR 1243. A public sewer does not fall within the Environmental Protection Act 1990 s 79(1)(a) (see PARA 156 head (1)): see *East Riding of Yorkshire Council v Yorkshire Water Services Ltd* [2001] Env LR 7.

161. Best practicable means.

Some statutory nuisances[1] provide that it is a defence[2] for a defendant to a prosecution for contravention of an abatement notice[3] to prove that he has used the best practicable means to prevent or counteract the effects of the nuisance. 'Best practicable means' is to be interpreted by reference to the following points[4]:

33 (1) 'practicable' means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications[5];

34 (2) the means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and structures[6];

35 (3) the test is to apply only so far as compatible with any duty imposed by law[7];

36 (4) the test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances[8]; and

37 (5) in circumstances where a code of practice[9] is applicable, regard must also be had to guidance given in it[10].

The onus of proving that the best practicable means have been used lies upon the defendant[11]. It is no defence to show that a statutory nuisance is caused by the negligence of an employee without any default on the part of the employer[12].

The use of the best practicable means to prevent or counteract the effects of a statutory nuisance also provides a ground of appeal against an abatement notice[13].

1 As to statutory nuisances see PARA 156. As to the meaning of 'nuisance' see PARA 159.

2 As to defences see PARA 204.

3 See PARAS 163, 200 et seq. As to the meaning of 'abatement notice' see PARA 200.

4 See the Environmental Protection Act 1990 s 79(9). In relation to noise nuisance see also the similar, but not identical provision, in the Control of Pollution Act 1974 s 72; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 823. 'Best practicable means' are the best means available and not merely those which are normally adopted: *Manchester Corpn v Farnworth* [1930] AC 171, HL. In relation to a similar statutory provision, it has been held that it was not enough that the precautions ordinarily adopted in the trade had been observed; what was required was the best available means which could be adopted for securing the end in view: see *Schofield v Schunck* (1855) 24 LTOS 253, 19 JP 84. See also *Manley v New Forest District Council* [2000] EHLR 113, [1999] 4 PLR 36 ('best practical means' did not include relocating business to other premises).

5 Environmental Protection Act 1990 s 79(9)(a). The effect on profitability is a relevant factor, but the mere fact of increased expenditure, or even unprofitability, is not enough to establish the defence: *Wivenhoe Port Ltd v Colchester Borough Council* [1985] JPL 175.

6 Environmental Protection Act 1990 s 79(9)(b).

7 Environmental Protection Act 1990 s 79(9)(c).

8 Environmental Protection Act 1990 s 79(9)(d).

9 As to the codes of practice, which relate to noise nuisance, see the Control of Pollution Act 1974 s 71; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 819.

10 Environmental Protection Act 1990 s 79(9).

11 *Armitage Ltd v Nicholson* (1913) 108 LT 993, DC; *Drummond & Sons Ltd v Nicholson* (1915) 84 LJKB 2190, DC. The failure by a defendant to respond to a request for information in relation to measures proposed to be taken to abate a nuisance may be taken into account in determining whether the defence has been made out: *Chapman v Gosberton Farm Produce Co Ltd* [1992] COD 486.

12 *Barnes v Akroyd* (1872) LR 7 QB 474; *Niven v Greaves* (1890) 54 JP 548, DC; *Armitage Ltd v Nicholson* (1913) 108 LT 993, DC.

13 See the Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(2)(e); and PARA 202 head (5).

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(5) STATUTORY NUISANCE/(ii) Statutory Powers and Duties/162. Duties of a local authority.

(ii) Statutory Powers and Duties

162. Duties of a local authority.

It is the duty of every local authority[1]: (1) to cause its area to be inspected from time to time to detect any statutory nuisances[2] which ought to be dealt with[3] by abatement notice and summary proceedings[4]; (2) where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint[5]; and (3) to cause its area to be inspected from time to time to decide how to exercise its powers concerning noise abatement zones[6]. The duty of a local authority to act against a statutory nuisance applies even though the nuisance results from conduct that is subject to regulation by a consent system operated by the Environment Agency[7]. A local authority is not under a duty to consult the perpetrator before serving an abatement notice, but if it elects to do so it must await a reasonable time for that person's response before issuing a notice[8].

1 As to the meaning of 'local authority' see PARA 155 note 5.

2 As to statutory nuisances see PARA 156. As to the meaning of 'nuisance' see PARAS 101-108, 159.

3 Ie under the Environmental Protection Act 1990 s 80 or under s 80A: see PARAS 200-206.

4 Environmental Protection Act 1990 s 79(1) (amended by the Noise and Statutory Nuisance Act 1993 s 2). As to abatement notices and proceedings by local authorities see PARAS 163, 200 et seq. As to the meaning of 'abatement notice' see PARA 200.

5 Environmental Protection Act 1990 s 79(1) (as amended: see note 4). The phrase 'reasonably practicable' includes a consideration of both what is physically feasible and financial constraints: *Jordan v Norfolk County Council* [1994] 4 All ER 218, [1994] 1 WLR 1353. See also *R (on the application of Anne) v Test Valley Borough Council* [2001] EWHC 1019 (Admin), [2001] 48 EG 127 (CS), [2001] All ER (D) 245 (Nov); and PARA 161.

6 Control of Pollution Act 1974 s 57 (amended by the Environmental Protection Act 1990 s 162(2), Sch 16 Pt III). As to a local authority's powers concerning noise abatement zones see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 824 et seq.

7 *R v Carrick District Council, ex p Shelley* [1996] Env LR 273, 95 LGR 620. As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. Once an authority is satisfied that a statutory nuisance exists it is under a mandatory duty to serve an abatement notice and cannot postpone such an action: see *R v Carrick District Council, ex p Shelley*.

8 *R v Falmouth and Truro Port Health Authority, ex p South West Water Ltd* [2001] QB 445, [2000] 3 All ER 306, CA (local authority had written before the service of the abatement notice and invited observations, but had issued the notice before any response was received; it was held that the letter had created a legitimate

expectation of a genuine consultation exercise and that the failure to carry out such consultation sustained an application for judicial review of the decision to issue the abatement notice).

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163. Powers to abate statutory nuisances.

Where a local authority[1] is satisfied that a statutory nuisance[2] exists, or is likely to occur or recur, in the area[3] of the authority, the local authority must serve an abatement notice[4] requiring the abatement of the nuisance[5]. Where an abatement notice has not been complied with, the local authority may itself abate the nuisance[6]. A local authority may also prosecute for a failure to comply with an abatement notice[7]. If a local authority is of the opinion that criminal proceedings would afford an inadequate remedy, it may take proceedings in the High Court for the purpose of securing the abatement or prohibition of that nuisance[8]. Such proceedings may be maintained notwithstanding that the local authority has suffered no damage from the nuisance[9].

1 As to the meaning of 'local authority' see PARA 155 note 5.

2 As to statutory nuisances see PARA 156. As to the meaning of 'nuisance' see PARAS 101-108, 159.

3 As to the area of a local authority see PARA 155 note 5.

4 As to the meaning of 'abatement notice' see PARA 200.

5 See further PARA 200 et seq.

6 See further PARA 207.

7 See further PARA 203.

8 See further PARA 205.

9 See PARA 205.

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(iii) Specific Statutory Nuisances

164. Premises that are unhealthy or a nuisance.

Any premises[1] that are in such a state as to be prejudicial to health[2] or a nuisance[3] constitute a statutory nuisance[4]. Examples of premises that have been found to constitute a statutory nuisance[5] include:

38 (1) premises with inadequate insulation against external noise caused by trains[6];
39 (2) premises from which the landlord has removed the windows[7];
40 (3) premises rendered prejudicial to health by problems emanating from other premises[8];

41 (4) premises that suffer from dampness and mould growth[9].

Examples of premises that have been held not to constitute a statutory nuisance include:

42 (a) a dwelling house with stained and peeling internal walls which were in need of decorative repair and which caused discomfort and inconvenience to the tenant[10];

43 (b) a dwelling house in such a state as to create a likelihood of accident causing personal injury[11].

The fact that the premises are empty is irrelevant[12]. The fact that premises are unfit for human habitation under provisions of the housing legislation is not determinative of their being a statutory nuisance[13]. Similarly the fact that the landlord is not in breach of any repairing covenant is irrelevant[14]. Premises which are only a nuisance because of the use to which they are put are not a statutory nuisance within the meaning of the legislation[15]. It is possible for premises which are not in such a state as to be prejudicial to health or a nuisance to reach that state by virtue merely of changes in the surroundings to those premises and without any deterioration of the premises themselves[16].

1 As to the meaning of 'premises' see PARA 160.

2 As to the meaning of 'prejudicial to health' see PARA 158.

3 As to the meaning of 'nuisance' see PARAS 101-108, 159.

4 Environmental Protection Act 1990 s 79(1)(a). See PARA 156 head (1).

5 Some of the examples cited were decided under earlier legislation with similar provisions.

6 This was held to include traffic noise in *Southwark London Borough Council v Ince* (1989) 21 HLR 504, [1989] COD 549, but this decision was doubted in *R (on the application of Vella) v Lambeth London Borough Council* [2005] EWHC 2473 (Admin), (2005) Times, 23 November, [2005] All ER (D) 171 (Nov). In fact the ambit of the Environmental Protection Act 1990 s 79(1)(a) is now regarded as restricted so as to exclude traffic noise from vehicles, machinery and equipment in the street, although train noise would still be included within the definition: see *Haringey London Borough Council v Jowett* [1999] EHLR 410, [1999] LGR 667, DC.

7 *Betts v Penge UDC* [1942] 2 KB 154, [1942] 2 All ER 61 (overruled in so far as it held that an interference with the personal comfort of the tenant, without showing prejudice to health, was sufficient for the purposes of a statutory nuisance by *National Coal Board v Neath Borough Council* [1976] 2 All ER 478, sub nom *National Coal Board v Thorne* [1976] 1 WLR 543, DC); *Salford City Council v McNally* [1976] AC 379, [1975] 2 All ER 860, HL.

8 *Pollway Nominees Ltd v Havering London Borough Council* (1989) 21 HLR 462, 88 LGR 192, DC.

9 *Greater London Council v Tower Hamlets London Borough Council* (1983) 15 HLR 54, DC; *Dover District Council v Farrar* (1980) 2 HLR 32, DC (where a local authority was held not responsible for a statutory nuisance (dampness) in premises which did have adequate electric heating but in which the tenants did not have the means to run it properly); *McCorley v Chief Executive of Birmingham City Council* (12 January 1984) Lexis; *Birmingham District Council v Kelly* (1985) 17 HLR 572, [1986] 2 EGLR 239, DC; *O'Toole v Knowsley Metropolitan Borough Council* [1999] 22 LS Gaz R 36, [1999] EHLR 420.

10 *Springett v Harold* [1954] 1 All ER 568, [1954] 1 WLR 521, DC.

11 *R v Bristol City Council, ex p Everett* [1999] 2 All ER 193, [1999] 1 WLR 1170, CA.

12 *Coventry City Council v Doyle* [1981] 2 All ER 184, [1981] 1 WLR 1325, DC.

13 *Salford City Council v McNally* [1976] AC 379, [1975] 2 All ER 860, HL; *Nottingham Friendship Housing Association Ltd* [1974] 2 All ER 760, [1974] 1 WLR 923, DC. As to housing conditions and housing standards see **HOUSING** vol 22 (2006 Reissue) PARA 359 et seq.

14 *Birmingham District Council v Kelly* [1986] 2 EGLR 239, (1985) 17 HLR 572, DC; *R v Highbury Corner Magistrates' Court, ex p Edwards* [1994] Env LR 215, 26 HLR 682, DC.

15 *Metropolitan Asylum District Managers v Hill* (1881) 6 App Cas 193, HL.

16 *Haringey London Borough Council v Jowett* [1999] EHLR 410, 32 HLR 308. In this case, the premises had been properly constructed and adequately insulated to exclude noise, but, owing to changes in the surroundings, the insulation proved inadequate. It was held (following *Southwark London Borough Council v Ince* (1989) 21 HLR 504, 153 JP 597) that the landlord could be liable because the obligation imposed is a continuous one, although the wide housing responsibilities and limited resources of a housing authority should be considered. However, *Southwark London Borough Council v Ince* was doubted in *R (on the application of Vella) v Lambeth London Borough Council* [2005] EWHC 2473 (Admin), (2005) Times, 23 November, [2005] All ER (D) 171 (Nov). See also PARA 158.

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165. Noise.

There are special legislative regimes dealing with noise: from loudspeakers in streets[1]; from audible intruder alarms[2]; from a dwelling at night-time[3]; within a noise abatement area[4]; from a construction site[5]; and from plant or machinery[6].

Subject to what might be permitted by a specific legislative regime, noise[7] emitted[8] from premises[9] so as to be prejudicial to health[10] or a nuisance[11] constitutes a statutory nuisance[12], except:

44 (1) in relation to premises: (a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence[13]; or (b) occupied by or for the purposes of a visiting force[14]; and

45 (2) in relation to noise caused by aircraft other than model aircraft[15].

Similarly, noise that is prejudicial to health or a nuisance and that is emitted from or caused by a vehicle, machinery or equipment[16] in a street[17] constitutes a statutory nuisance[18], except:

46 (i) noise made by traffic[19];

47 (ii) noise made by any naval, military or air force of the Crown or by a visiting force[20]; or

48 (iii) noise made by a political demonstration or a demonstration supporting or opposing a cause or campaign[21].

Whether noise constitutes a nuisance is a question of degree[22]. Provided that the level of noise is capable of constituting a nuisance at common law, it is not necessary to establish that civil proceedings would succeed[23]. Examples of noise held to constitute a nuisance include barking dogs, quarry machinery, overnight use of facilities provided by a garage forecourt, amplified music from a pub, and noise made by poultry[24]. Where the noise is caused maliciously, this is taken into account in determining if the noise constitutes a nuisance[25]. In any proceedings for this type of statutory nuisance, it is prudent for a sound-meter reading to be taken[26].

1 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARAS 841-842.

2 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 843 et seq.

3 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 848 et seq.

4 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 824 et seq.

5 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 835 et seq.

6 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 840.

7 For the purposes of the Environmental Protection Act 1990 Pt III (ss 79-84), 'noise' includes vibration: s 79(7). See also the text to note 15.

8 'Emitted' means 'goes out from' rather than 'produced by': *Network Housing Association v Westminster City Council* (1994) 27 HLR 189, 93 LGR 280, DC (where the court upheld an abatement notice which had been served upon the defendant housing association requiring it to insulate a void between two flats in a block of flats that it owned to prevent noise from the normal user of one flat reaching another flat).

9 As to the meaning of 'premises' see PARA 160.

10 As to the meaning of 'prejudicial to health' see PARA 158.

11 As to the meaning of 'nuisance' see PARAS 101-108, 159.

12 Environmental Protection Act 1990 s 79(1)(g). See PARA 156 head (9). See also *Coventry City Council v Harris* (1992) 4 Land Management and Env LR 168 (practising brass instrument).

13 Environmental Protection Act 1990 s 79(2)(a).

14 Environmental Protection Act 1990 s 79(2)(b). 'Visiting force' means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 140): Environmental Protection Act 1990 s 79(2).

15 Environmental Protection Act 1990 s 79(6).

16 As to the meaning of 'equipment' see PARA 156 note 20.

17 As to the meaning of 'street' see PARA 156 note 21.

18 Environmental Protection Act 1990 s 79(1)(ga) (added by the Noise and Statutory Nuisance Act 1993 s 2). See also PARA 156 head (10).

19 Environmental Protection Act 1990 s 79(6A)(a) (s 79(6A) added by the Noise and Statutory Nuisance Act 1993 s 2(3)).

20 Environmental Protection Act 1990 s 79(6A)(b) (as added: see note 19).

21 Environmental Protection Act 1990 s 79(6A)(c) (as added: see note 19).

22 *Gaunt v Fynney* (1872) 8 Ch App 8, 42 LJ Ch 122. See also *Murdoch v Glacier Metal Co Ltd* [1998] Env LR 732, [1998] EHLR 198, CA. It is up to the subjective judgment of a court as to whether noise constitutes a nuisance, and it is not obliged to accept the evidence of even an expert witness: *Hackney London Borough Council v Rottenberg* [2007] EWHC 166 (Admin), [2008] JPL 1.

23 *A Lambert Flat Management Ltd v Lomas* [1981] 2 All ER 280, [1981] 1 WLR 898, DC.

24 *Clemons v Stewart* (1969) 113 Sol Jo 427, DC; *Budd v Colchester Borough Council* [1999] LGR 601, [1999] Env LR 739; *Manley v New Forest District Council* [2007] EWHC 3188 (Admin), [2008] Env LR 26 (barking dogs); *Saddleworth UDC v Aggregate and Sand Ltd* (1970) 69 LGR 103, 114 Sol Jo 931 (quarry machinery); *Hammersmith London Borough Council v Magnum Automated Forecourts Ltd* [1978] 1 All ER 401, [1978] 1 WLR 50, CA (garage forecourt); *Surrey Free Inns plc v Gosport Borough Council* (1998) 96 LGR 369, [1998] Crim LR 578, DC (affd sub nom *SFI Group plc (formerly Surrey Free Inns plc) v Gosport Borough Council* [1999] LGR 610, [2000] EHLR 137, CA) (amplified music at a public house); *R v Knightsbridge Crown Court, ex p Cataldi* [1999] Env LR 62, DC (amplified music); *Lowe v South Somerset District Council* [1998] JPL 458, (1997) 96 LGR 487, DC (poultry); *Roper v Tussauds Theme Parks Ltd* [2007] EWHC 624 (Admin), [2007] Env LR 31 (noise from theme park).

25 *Christie v Davey* [1893] 1 Ch 316, (1892) 62 LJ Ch 439.

26 *R v Fenny Stratford Justices, ex p Watney Mann (Midlands) Ltd* [1976] 2 All ER 888, [1976] 1 WLR 1101, DC. However, a sound-meter reading is not essential: *Cooke v Adatia* (1988) 153 JP 129, DC (evidence by a senior environmental officer of decibel levels was held sufficient).

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(5) STATUTORY NUISANCE/(iii) Specific Statutory Nuisances/166. Smoke.

166. Smoke.

Smoke[1] emitted[2] from premises[3] so as to be prejudicial to health[4] or a nuisance[5] constitutes a statutory nuisance[6], except where:

49 (1) the smoke is emitted from a chimney[7] of a private dwelling[8] within a smoke control area[9];

50 (2) it is dark smoke[10] emitted from a chimney of a building or a chimney serving the furnace of a boiler or industrial plant attached to a building or for the time being fixed to or installed on any land[11];

51 (3) it is emitted from a railway locomotive steam engine[12];

52 (4) it is dark smoke emitted otherwise than as mentioned in head (2) above from industrial or trade premises[13];

53 (5) the smoke is emitted from premises occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence[14]; or

54 (6) the smoke is emitted from premises occupied by or for the purposes of a visiting force[15].

Provisions relating to statutory nuisance[16] do not apply in relation to smoke, grit or dust[17] from the combustion of refuse deposited from any mine or quarry[18] from which coal or shale has been, is being or is to be got[19].

1 'Smoke' includes soot, ash, grit and gritty particles emitted in smoke: Environmental Protection Act 1990 s 79(7). The smell of smoke is sufficient to constitute a smoke nuisance: *Griffiths v Pembrokeshire County Council* [2000] Env LR 622, DC.

2 In the context of noise, 'emitted' has been held to mean 'goes out from', and not 'produced by': see *Network Housing Association v Westminster City Council* (1994) 27 HLR 189, 93 LGR 280, DC; and PARA 165 note 8.

3 As to the meaning of 'premises' see PARA 160.

4 As to the meaning of 'prejudicial to health' see PARA 158.

5 As to the meaning of 'nuisance' see PARAS 101-108, 159.

6 Environmental Protection Act 1990 s 79(1)(b). See PARA 156 head (2). See also *Crump v Lambert* (1867) LR 3 Eq 409 at 412 per Lord Romilly MR (where it was held that smoke by itself, although not injurious to health, could amount to a nuisance); *Gaskell v Bayley* (1874) 30 LT 516.

7 'Chimney' includes structures and openings of any kind from or through which smoke may be emitted: Environmental Protection Act 1990 s 79(7). A ship's funnel may be a chimney: *Tough v Hopkins* [1904] 1 KB 804, DC.

For the purposes of research relevant to the problem of the pollution of the air, any chimney may be exempted from the provisions of the Environmental Protection Act 1990 Pt III (ss 79-84): see the Clean Air Act 1993 s 45(1)(a); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 211.

8 'Private dwelling' means any building or part of a building used or intended to be used as a dwelling: Environmental Protection Act 1990 s 79(7). See also *McNair v Baker* [1904] 1 KB 208, (1903) 73 LJKB 120, DC.

9 Environmental Protection Act 1990 s 79(3)(i). As to smoke control areas see the Clean Air Act 1993 ss 18, 19; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 217 et seq.

10 As to the prohibition of the emission of dark smoke see the Clean Air Act 1993 s 1; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 214. As to the meaning of 'dark smoke' see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 214; definition applied by the Environmental Protection Act 1990 s 79(7) (amended by the Clean Air Act 1993 s 67(1), Sch 4 para 4).

11 Environmental Protection Act 1990 s 79(3)(ii).

12 Environmental Protection Act 1990 s 79(3)(iii).

13 Environmental Protection Act 1990 s 79(3)(iv). As to the meaning of 'industrial, trade or business premises' see PARA 156 note 12.

14 Environmental Protection Act 1990 s 79(2)(a).

15 Environmental Protection Act 1990 s 79(2)(b). As to the meaning of 'visiting force' see PARA 165 note 14.

16 Ie the Environmental Protection Act 1990 Pt III.

17 As to dust see PARA 168 note 1.

18 'Mine' and 'quarry' have the same meanings as in the Mines and Quarries Act 1954 (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARAS 5-6): Clean Air Act 1993 s 42(6).

19 Clean Air Act 1993 s 42(4). As to the control of smoke from the combustion of refuse from mines and quarries see s 42; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 238. The provisions of s 42(2)-(4) do not apply to any deposit of refuse deposited from a mine or quarry before 5 July 1956 if at that date the deposit was no longer in use as such and was not under the control of the owner of the mine or quarry: s 67(2), Sch 5 Pt II para 10.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(5) STATUTORY NUISANCE/(iii) Specific Statutory Nuisances/167. Fumes and gases.

167. Fumes and gases.

Fumes or gases emitted[1] from premises[2] so as to be prejudicial to health[3] or a nuisance[4] constitute a statutory nuisance[5]. However, this only applies to premises that are private dwellings[6]. 'Fumes' means any airborne solid matter smaller than dust[7]. 'Gas' includes vapour and moisture precipitated from vapour[8].

1 In the context of noise, 'emitted' has been held to mean 'goes out from', and not 'produced by': see *Network Housing Association v Westminster City Council* (1994) 27 HLR 189, 93 LGR 280, DC; and PARA 165 note 8.

2 As to the meaning of 'premises' see PARA 160.

3 As to the meaning of 'prejudicial to health' see PARA 158.

4 As to the meaning of 'nuisance' see PARAS 101-108, 159.

5 Environmental Protection Act 1990 s 79(1)(c). See PARA 156 head (3). As to the meaning of 'private dwelling' see PARA 166 note 8.

6 Environmental Protection Act 1990 s 79(4).

7 Environmental Protection Act 1990 s 79(7). As to the meaning of 'dust' see PARA 168 note 1.

8 Environmental Protection Act 1990 s 79(7).

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(5) STATUTORY NUISANCE/(iii) Specific Statutory Nuisances/168. Dust, steam, smell or other effluvia.

168. Dust, steam, smell or other effluvia.

Any dust[1], steam, smell or other effluvia[2] arising on industrial, trade or business premises[3] and that is prejudicial to health[4] or a nuisance[5] constitutes a statutory nuisance[6]. This does not, however, apply to steam emitted from a railway locomotive engine[7].

Provisions relating to statutory nuisance[8] do not apply in relation to dust from the combustion of refuse deposited from a mine or quarry[9] from which coal or shale has been, is being or is to be got[10].

1 'Dust' does not include dust emitted from a chimney as an ingredient of smoke: Environmental Protection Act 1990 s 79(7). As to the meaning of 'chimney' see PARA 166 note 7. As to the meaning of 'smoke' see PARA 166 note 1. As to smoke as a statutory nuisance see PARA 166.

2 Effluvia which is offensive to the sense of smell and capable of making people who are already ill more ill may be a statutory nuisance: *Malton Board of Health v Malton Manure Co* (1874) 4 Ex D 302.

3 As to the meaning of 'industrial, trade or business premises' see PARA 156 note 12.

4 As to the meaning of 'prejudicial to health' see PARA 158.

5 As to the meaning of 'nuisance' see PARAS 101-108, 159.

6 Environmental Protection Act 1990 s 79(1)(d). See PARA 156 head (4). It has been held that, for dust to be a statutory nuisance, the nuisance has to be one interfering materially with the personal comfort of residents in the sense that it materially affects their well-being even if it might not be prejudicial to their health: *Wivenhoe Port Ltd v Colchester Borough Council* [1985] JPL 175.

7 Environmental Protection Act 1990 s 79(5).

8 Ie the Environmental Protection Act 1990 Pt III (ss 79-84).

9 'Mine' and 'quarry' have the same meanings as in the Mines and Quarries Act 1954 (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) PARAS 5-6): Clean Air Act 1993 s 42(6).

10 Clean Air Act 1993 s 42(4). See also PARA 166. As to the control of smoke from the combustion of refuse from mines and quarries see s 42; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 238. The provisions of s 42(2)-(4) do not apply to any deposit of refuse deposited from a mine or quarry before 5 July 1956 if at that date the deposit was no longer in use as such and was not under the control of the owner of the mine or quarry: s 67(2), Sch 5 Pt II para 10.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(5) STATUTORY NUISANCE/(iii) Specific Statutory Nuisances/169. Accumulation and deposits.

169. Accumulation and deposits.

Any accumulation or deposit which is prejudicial to health[1] or a nuisance[2] constitutes a statutory nuisance[3]. Examples of accumulations and deposits which have been held to constitute a statutory nuisance include sheep droppings in a market place[4], an accumulation of

dung[5], manure[6], an accumulation of seaweed[7], heaps of refuse[8], and deposits of cinders[9]. In order to constitute an accumulation or deposit, there must be some degree of permanence[10]. An accumulation of inert matter, without any putrescible matter attached, does not constitute a nuisance within this head merely because of its visual impact[11].

1 As to the meaning of 'prejudicial to health' see PARA 158.

2 As to the meaning of 'nuisance' see PARAS 101-108, 159.

3 Environmental Protection Act 1990 s 79(1)(e). See PARA 156 head (5). See eg *R v Carrick District Council, ex p Shelley* [1996] Env LR 273, 95 LGR 620 (pollution of beaches).

4 *Draper v Sperring* (1861) 10 CBNS 113, 30 LJMC 225.

5 *Flight v Thomas* (1839) 10 Ad & El 590; *Smith v Waghorn* (1863) 27 JP 744.

6 *London Brighton and South Coast Rly Co v Haywards's Heath UDC* (1899) 80 LT 266; *Peaty v Field* [1971] 2 All ER 895, [1971] 1 WLR 387, DC (pig manure); *Bland v Yates* (1914) 58 Sol Jo 612 (pile of garden manure that gave off smells and attracted flies).

7 *Proprietors of Margate Pier and Harbour v Margate Town Council* (1869) 33 JP 437.

8 *R v Epping (Waltham Abbey) Justices, ex p Burlinson* [1948] 1 KB 79, [1947] 2 All ER 537, DC.

9 *Bishop Auckland Local Board v Bishop Auckland Iron and Steel Co* (1882) 10 QBD 138, DC.

10 It seems that manure which is being loaded or unloaded at a railway station is not permanent enough to be an accumulation or deposit: see *Great Northern Rly Co v Lurgan Town Comrs* [1897] 2 IR 340; *London, Brighton and South Coast Rly Co v Hayward's Heath UDC* (1899) 80 LT 266, DC.

11 *Coventry City Council v Cartwright* [1975] 2 All ER 99 at 104, [1975] 1 WLR 845 at 850, DC, per Lord Widgery CJ.

170. Animals.

Any animal kept in such a place or manner as to be prejudicial to health[1] or a nuisance[2] constitutes a statutory nuisance[3]. For example, the keeping of a large number of cats some of which strayed, the keeping of many dogs and the keeping of snakes have been held to constitute a statutory nuisance[4]. It seems that the mere fact that an animal is noisy does not cause it to fall within this head, although it may otherwise constitute a statutory nuisance[5].

1 As to the meaning of 'prejudicial to health' see PARA 158.

2 As to the meaning of 'nuisance' see PARAS 101-108, 159.

3 Environmental Protection Act 1990 s 79(1)(f). See PARA 156 head (6).

4 *R v Walden-Jones, ex p Coton* [1963] Crim LR 839, DC (cats); *Myatt v Teignbridge District Council* [1994] Env LR 78 (dogs); *R v King* (1895) 59 JP 571 (snakes).

5 *Galer v Morrissey* [1955] 1 All ER 380, sub nom *Morrissey v Galer* [1955] 1 WLR 110, DC (noisy greyhounds). Cf *Coventry City Council v Cartwright* [1975] 2 All ER 99 at 103-104, [1975] 1 WLR 845 at 850, DC, per Lord Widgery CJ. Noisy animals may constitute an actionable common law nuisance (see *Leeman v Montagu* [1936] 2 All ER 1677), and may now be a statutory nuisance under the Environmental Protection Act 1990 s 79(1)(g) (see *Budd v Colchester Borough Council* [1999] LGR 601, [1999] Env LR 739; and PARA 165). It is not necessary to specify whether the statutory nuisance is from the keeping of animals or from noise if an

abatement notice is of sufficient particularity to understand what is complained of: *Myatt v Teignbridge District Council* [1994] Env LR 78.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(5) STATUTORY NUISANCE/(iii) Specific Statutory Nuisances/171. Insects.

171. Insects.

Any insects emanating from relevant industrial, trade or business premises[1] and being prejudicial to health[2] or a nuisance[3] constitute a statutory nuisance[4]. However, there is an exception for certain insects that are wild animals[5].

1 As to the meaning of 'relevant industrial, trade or business premises' see PARA 156 note 12.

2 As to the meaning of 'prejudicial to health' see PARA 158.

3 As to the meaning of 'nuisance' see PARAS 101-108, 159.

4 Environmental Protection Act 1990 s 79(1)(fa) (added by the Clean Neighbourhoods and Environment Act 2005 s 101(1), (2)). See PARA 156 head (7).

5 See the Environmental Protection Act 1990 s 79(5A) (added by the Clean Neighbourhoods and Environment Act 2005 s 101(1), (3)). The Environmental Protection Act 1990 s 79(1)(fa) does not apply to insects that are wild animals included in the Wildlife and Countryside Act 1981 Sch 5 (animals which are protected: see **ANIMALS** vol 2 (2008) PARA 1015), unless they are included in respect of s 9(5) only: see the Environmental Protection Act 1990 s 79(5A) (as so added).

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/1. SCOPE OF NUISANCE/(5) STATUTORY NUISANCE/(iii) Specific Statutory Nuisances/172. Artificial light.

172. Artificial light.

Artificial light emitted from premises[1] so as to be prejudicial to health[2] or a nuisance[3] constitutes a statutory nuisance[4], except:

55 (1) in relation to premises: (a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence[5]; or (b) occupied by or for the purposes of a visiting force[6]; and

56 (2) in relation to artificial light emitted from: (a) an airport[7]; (b) harbour premises[8]; (c) railway premises[9], not being relevant separate railway premises[10]; (d) tramway premises[11]; (e) a bus station[12] and any associated facilities[13]; (f) a public service vehicle operating centre[14]; (g) a goods vehicle operating centre[15]; (h) a lighthouse[16]; (i) a prison[17].

1 As to the meaning of 'premises' see PARA 160.

2 As to the meaning of 'prejudicial to health' see PARA 158.

3 As to the meaning of 'nuisance' see PARAS 101-108, 159.

4 Environmental Protection Act 1990 s 79(1)(fb) (added by the Clean Neighbourhoods and Environment Act 2005 s 102(1), (2)). See PARA 156 head (8).

5 Environmental Protection Act 1990 s 79(2)(a) (s 79(2) amended by the Clean Neighbourhoods and Environment Act 2005 s 102(1), (3)).

6 Environmental Protection Act 1990 s 79(2)(b) (as amended: see note 5). As to the meaning of 'visiting force' see PARA 165 note 14.

7 Environmental Protection Act 1990 s 79(5B)(a) (s 79(5B) added by the Clean Neighbourhoods and Environment Act 2005 s 102(1), (4)). 'Airport' has the meaning given by the Transport Act 2000 s 95 (see **AIR LAW** vol 2 (2008) PARA 228): Environmental Protection Act 1990 s 79(7) (definition added by the Clean Neighbourhoods and Environment Act 2005 s 102(1), (5)).

8 Environmental Protection Act 1990 s 79(5B)(b) (as added: see note 7). 'Harbour premises' means premises which form part of a harbour area and which are occupied wholly or mainly for the purposes of harbour operations; and for the purposes of this definition 'harbour area' and 'harbour operations' have the same meanings as in the Aviation and Maritime Security Act 1990 Pt III (ss 18-46) (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARAS 1218, 1219): Environmental Protection Act 1990 s 79(7) (definition added by the Clean Neighbourhoods and Environment Act 2005 s 102(1), (5)).

9 'Railway premises' means any premises which fall within the definition of 'light maintenance depot', 'network', 'station' or 'track' in the Railways Act 1993 s 83 (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARAS 82, 83): Environmental Protection Act 1990 s 79(7) (definition added by the Clean Neighbourhoods and Environment Act 2005 s 102(1), (5)).

10 Environmental Protection Act 1990 s 79(5B)(c) (as added: see note 7). 'Relevant separate railway premises' has the meaning given by s 79(7A): s 79(7) (definition added by the Clean Neighbourhoods and Environment Act 2005 s 102(1), (5)). Railway premises are relevant separate railway premises if: (1) they are situated within premises used as a museum or other place of cultural, scientific or historical interest, or premises used for the purposes of a funfair or other entertainment, recreation or amusement; and (2) they are not associated with any other railway premises: Environmental Protection Act 1990 s 79(7A) (s 79(7A), (7B) added by the Clean Neighbourhoods and Environment Act 2005 s 102(1), (6)). For the purposes of the Environmental Protection Act 1990 s 79(7A): (a) a network situated as described in head (1) is associated with other railway premises if it is connected to another network (not being a network situated as described in head (1)); (b) track that is situated as described in head (1) but is not part of a network is associated with other railway premises if it is connected to track that forms part of a network (not being a network situated as described in head (1)); (c) a station or light maintenance depot situated as described in head (1) is associated with other railway premises if it is used in connection with the provision of railway services other than services provided wholly within the premises where it is situated: s 79(7B) (as so added). In s 79(7B), 'light maintenance depot', 'network', 'railway services', 'station' and 'track' have the same meanings as in the Railways Act 1993 Pt I (ss 4-83) (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARAS 82, 83): see the Environmental Protection Act 1990 s 79(7B) (as so added).

11 Environmental Protection Act 1990 s 79(5B)(d) (as added: see note 7). 'Tramway premises' means any premises which, in relation to a tramway, are the equivalent of the premises which, in relation to a railway, fall within the definition of 'light maintenance depot', 'network', 'station' or 'track' in the Railways Act 1993 s 83 (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARAS 82, 83): Environmental Protection Act 1990 s 79(7) (definition added by the Clean Neighbourhoods and Environment Act 2005 s 102(1), (5)).

12 'Bus station' has the meaning given by the Transport Act 1985 s 83 (see **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1274): Environmental Protection Act 1990 s 79(7) (definition added by the Clean Neighbourhoods and Environment Act 2005 s 102(1), (5)).

13 Environmental Protection Act 1990 s 79(5B)(e) (as added: see note 7). 'Associated facilities', in relation to a bus station, has the meaning given by the Transport Act 1985 s 83 (see **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1274): Environmental Protection Act 1990 s 79(7) (definition added by the Clean Neighbourhoods and Environment Act 2005 s 102(1), (5)).

14 Environmental Protection Act 1990 s 79(5B)(f) (as added: see note 7). 'Public service vehicle operating centre', in relation to public service vehicles used under a PSV operator's licence, means a place which is an operating centre of those vehicles; and for the purposes of this definition 'operating centre', 'PSV operator's licence' and 'public service vehicle' have the same meanings as in the Public Passenger Vehicles Act 1981 (see **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARA 1136): Environmental Protection Act 1990 s 79(7) (definition added by the Clean Neighbourhoods and Environment Act 2005 s 102(1), (5)).

15 Environmental Protection Act 1990 s 79(5B)(g) (as added: see note 7). 'Goods vehicle operating centre', in relation to vehicles used under an operator's licence, means a place which is specified in the licence as an operating centre for those vehicles; and for the purposes of this definition 'operating centre' and 'operator's

licence' have the same meanings as in the Goods Vehicles (Licensing of Operators) Act 1995 (see **ROAD TRAFFIC** vol 40(3) (2007 Reissue) PARAS 1329, 1332): Environmental Protection Act 1990 s 79(7) (definition added by the Clean Neighbourhoods and Environment Act 2005 s 102(1), (5)).

16 Environmental Protection Act 1990 s 79(5B)(h) (as added: see note 7). 'Lighthouse' has the same meaning as in the Merchant Shipping Act 1995 Pt VIII (ss 193-223) (see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1068): Environmental Protection Act 1990 s 79(7) (definition added by the Clean Neighbourhoods and Environment Act 2005 s 102(1), (5)).

17 Environmental Protection Act 1990 s 79(5B)(i) (as added: see note 7). 'Prison' includes a young offender institution (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARAS 85-88): Environmental Protection Act 1990 s 79(7) (definition added by the Clean Neighbourhoods and Environment Act 2005 s 102(1), (5)).

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/2. LEGAL PROCEEDINGS AND DEFENCES/(1) TYPES OF PROCEEDINGS/173. Kinds of, and jurisdiction in, civil proceedings.

2. LEGAL PROCEEDINGS AND DEFENCES

(1) TYPES OF PROCEEDINGS

173. Kinds of, and jurisdiction in, civil proceedings.

Civil proceedings for a nuisance may take the form of (1) an action for private nuisance[1]; (2) an action for public nuisance by the Attorney General either alone or at the relation of a local authority or private individual[2]; (3) an action for public nuisance by a local authority on behalf of the inhabitants of its area[3]; or (4) an action for public nuisance by a private individual or local authority[4].

Civil proceedings brought by or in the name of the Attorney General or by a local authority or by a private individual to restrain the commission or continuation of a nuisance or to recover damages are heard in either the Chancery Division or the Queen's Bench Division of the High Court. The county courts also have jurisdiction to hear such an action and the financial limit which formerly existed on the jurisdiction of the county court in cases of contract and tort no longer does so[5]. Proceedings may be commenced in either the High Court or the county court, but if the value of the claim is less than £25,000 the action will normally be tried in the county court unless, having regard to factors such as the complexity of the issues involved, trial in the High Court is more appropriate[6]. The county court may also where appropriate grant an injunction; the former requirement that such an injunction had to be ancillary to a claim for damages no longer exists[7].

1 See PARAS 175-186.

2 See PARAS 189-191.

3 See PARA 188.

4 See PARAS 187-188.

5 See the Courts and Legal Services Act 1990 s 1.

6 See the High Court and County Courts Jurisdiction Order 1991, SI 1991/724; and **CIVIL PROCEDURE** vol 11 (2009) PARA 116; **COURTS**.

7 See the County Courts Act 1984 s 38; and **CIVIL PROCEDURE** vol 11 (2009) PARA 345.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/2. LEGAL PROCEEDINGS AND DEFENCES/(1) TYPES OF PROCEEDINGS/174. Criminal proceedings.

174. Criminal proceedings.

Every public nuisance is an offence at common law and may be the subject of indictment or summary proceedings[1], and these procedures are not ousted unless they are barred by the express or clearly implied terms of a statute[2]. At the trial the court may order the abatement of the nuisance[3].

1 See the Magistrates' Courts Act 1980 s 17(1), Sch 1 para 1.

2 See 2 Hawk PCC 25 s 4; *R v Hall* [1891] 1 QB 747, where the subject is fully discussed. As to statutory nuisances see PARAS 115, 155-172, 199-212.

3 See eg *R v Pappineau* (1726) 2 Stra 686; *R v Stead* (1799) 8 Term Rep 142; *R v Incledon* (1810) 13 East 164.

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(2) ACTION FOR PRIVATE NUISANCE

(i) Who may Sue

175. Claims for damages.

A person may sue in nuisance only if he has an interest in the land affected; and he may bring an action and claim damages for the injury alone or together with a claim for an injunction[1]. Residents without any interest in the land affected cannot sue[2].

1 As to damages see PARAS 227-229; and **DAMAGES**. As to injunctions see PARAS 230-236; and **CIVIL PROCEDURE** vol 11 (2009) PARA 331 et seq. The expense of removing a nuisance may be recovered: *The Ella* [1915] P 111.

2 See PARA 179.

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176. Reversioners.

For a right of action in respect of a nuisance to lie at the suit of a reversioner, the injury complained of must be such that, from its permanent[1] character or otherwise[2], it is necessarily prejudicial to the reversion[3], that is to say it must be something the effects of which will continue to the time when the reversion will come into possession, or something which operates as a denial of right of the reversioner[4]. The question whether there is damage to the reversion is a question of fact[5].

1 'Permanent' means that which will continue indefinitely until something is done to remove it: *Jones v Llanrwst UDC* [1911] 1 Ch 393 at 404 per Parker J. See further *White v London General Omnibus Co* (1914) 58 Sol Jo 339, where nuisance by noise and smell from a garage was held not to be a permanent injury to the reversion.

2 A reversioner has a right of action where his property is injured by vibration (*Shelfer v City of London Electric Lighting Co, Meux's Brewery Co v City of London Electric Lighting Co* [1895] 1 Ch 287, CA; *Colwell v St Pancras Borough Council* [1904] 1 Ch 707), or damaged by smoke or fumes (*Walter v Selfe* (1851) 4 De G & Sm 315), or affected by damp from an artificial mound (*Broder v Saillard* (1876) 2 ChD 692); or where ancient lights of his premises are obstructed (*Jesser v Gifford* (1767) 4 Burr 2141; *Wilson v Townend* (1860) 1 Drew & Sm 324; *Metropolitan Association v Petch* (1858) 5 CBNS 504; *Shadwell v Hutchinson* (1829) 3 C & P 615), and in such cases the reversioner may bring another action for a further period of continuance (*Shadwell v Hutchinson* (1831) 4 C & P 333); or where a right of way belonging to him is obstructed by a permanent structure (*Bower v Hill* (1835) 1 Scott 526; and see *Bell v Midland Rly Co* (1861) 10 CBNS 287) or by locking a gate so as to amount to a denial of his right (*Kidgill v Moor* (1850) 9 CB 364); or where damage has been done by flooding (*Bedingfield v Onslow* (1685) 3 Lev 209; cf *Baxter v Taylor* (1832) 4 B & Ad 72). See also *Jones v Llanrwst UDC* [1911] 1 Ch 393 at 404.

3 *Jackson v Pesked* (1813) 1 M & S 234.

4 It has been held that a reversioner has no right of action for nuisance caused by noise or smoke affecting the comfort of tenants, even to the extent of compelling them to leave, since such nuisances may cease at any moment (*Jones v Chappell* (1875) LR 20 Eq 539; *Simpson v Savage* (1856) 1 CBNS 347; *Mumford v Oxford, Worcester and Wolverhampton Rly Co* (1856) 1 H & N 34; *Broder v Saillard* (1876) 2 ChD 692; *Cooper v Crabtree* (1881) 19 ChD 193 (affd (1882) 20 ChD 589, CA) (erection of poles and hoarding)); or for an entry on land in possession of a tenant in exercise of an alleged right of way (*Baxter v Taylor* (1832) 4 B & Ad 72; and see *Damper v Bassett* [1901] 2 Ch 350; cf *Kidgill v Moor* (1850) 9 CB 364), because such entry would not be evidence against the reversioner (*Bower v Hill* (1835) 1 Scott 526 at 528); or for obstruction of his tenant's access to premises (*Dobson v Blackmore* (1847) 9 QB 991; *Mott v Shoolbred* (1875) LR 20 Eq 22); or for damage done by flooding where the damage was not such as would last to the end of the term (*Rust v Victoria Graving Dock Co and London and St Katharine Dock Co* (1887) 36 ChD 113, CA); or for neglect to repair a road over which there was a right of way (*Hopwood v Schofield* (1837) 2 Mood & R 34); or for raising a wall and placing timber on it overhanging a yard, the alleged injury being the loss of user of the original wall and the discharge of rainwater into the yard (*Jackson v Pesked* (1813) 1 M & S 234).

5 *Tucker v Newman* (1839) 11 Ad & El 40; *Young v Spencer* (1829) 10 B & C 145; *Jones v Llanrwst UDC* [1911] 1 Ch 393 at 404. As to damages for a reversioner see PARA 228.

177. Occupiers.

A person in lawful occupation of premises is entitled to be protected against any interference with his rights as occupier[1]. The claimant himself must have the legal right of occupation[2]; thus a person on premises as a mere licensee has no right of action in respect of a private nuisance[3], even if he is a lawful and permanent resident such as a member of the occupier's family[4]. It has also been held that a tenant who has completely divested himself of any legal interest in the demised premises by assignment and who subsequently re-enters the premises on the absconding of the assignee cannot sue in nuisance[5]. An occupier may, however, recover in respect of damage occurring before he acquired the property if the nuisance is continuing and he has incurred a loss in respect of it[6].

The occupier of oyster beds within the limits of an exclusive fishing area has a right of action against third persons who pollute the beds[7].

The extent of occupation conferred by the grant of grazing rights in a lane by a local authority in which the surface of the lane was vested by statute is not sufficient occupation upon which

to base an action[8]. A tenant under a building agreement who, under and for the purpose of that agreement, has a right of entry on the foreshore cannot maintain an action against a person for taking shingle or placing bathing tents on it[9], but a contractor injured by interference with a dam which he made with the consent of the owner of the soil has been held to have sufficient occupation to give him a right of action[10].

1 Where the claimant and defendant are joint owners and occupiers of land an action will lie against a defendant who commits a nuisance which affects the land of which the claimant is in sole occupation: *Hooper v Rogers* [1975] Ch 43, [1974] 3 All ER 417, CA.

2 Where the nuisance is in the nature of a trespass the person in possession may have the right to sue even though he has no legal right to continue in possession against the true owner, because trespass is an injury to possession; and a defendant cannot in such a case set up a jus tertii against a possessory title: see *Nicholls v Ely Beet Sugar Factory* [1931] 2 Ch 84 at 87 per Farwell J (pollution of a several fishery). See also *Hastings Corpn v Ivall* (1874) LR 19 Eq 558, where an injunction was granted to the local corporation to restrain nuisance caused by the defendant dumping earth on the foreshore, which the court found to be in the possession of the corporation, without deciding the question of its title as against the Crown.

3 See *Hunter v Canary Wharf Ltd* [1997] AC 655, [1997] 2 All ER 426, HL. See also *Malone v Laskey* [1907] 2 KB 141, CA; *Butcher Robinson & Staples Ltd v London Regional Transport* (1999) 79 P & CR 523, [1999] All ER (D) 481 (claimants occupying different parts of premises without written tenancy agreement unable to maintain action).

4 See PARA 179.

5 *Metropolitan Properties Ltd v Jones* [1939] 2 All ER 202; but see criticism of this case in *Hunter v Canary Wharf Ltd* [1997] AC 655 at 704, [1997] 2 All ER 426 at 449-450, HL, per Lord Hoffman.

6 See *Masters v Brent London Borough Council* [1978] QB 841, [1978] 2 All ER 664.

7 *Foster v Warblington UDC* [1906] 1 KB 648, CA; and see *Colchester Corpn v Brooke* (1846) 7 QB 339; and **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 1037. An exclusive right of fishing is referred to as a several fishery: see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 805. The mere depositing of oysters where the public has a right of fishing does not suffice to give the depositor a right of action: see *Truro Corpn v Rowe* [1902] 2 KB 709, CA; and **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARAS 801, 1037.

8 *Coverdale v Charlton* (1878) 4 QBD 104, CA.

9 *Laird v Briggs* (1881) 19 ChD 22, CA.

10 *Dyson v Collick* (1822) 5 B & Ald 600.

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178. Tenants.

A yearly[1] or weekly[2] tenant is entitled to be protected from a nuisance[3], but the fact that his term is a short one may be a circumstance to be considered when an injunction is claimed[4], and the injunction may be limited to the continuance of his tenancy[5].

1 *Inchbald v Robinson, Inchbald v Barrington* (1869) 4 Ch App 388.

2 See *Jones v Chappell* (1875) LR 20 Eq 539.

3 See eg *Sampson v Hodson-Pressinger* [1981] 3 All ER 710, 12 HLR 40, CA; *Guppys (Bridport) Ltd v Brookling, Guppys (Bridport) Ltd v James* [1984] 1 EGLR 29, CA (exemplary damages awarded). As to the power of a local authority to obtain an injunction protecting tenants from anti-social behaviour see PARA 188 note 2.

4 *Jacomb v Knight* (1863) 3 De GJ & Sm 533; *Webster v Bakewell Rural Council (No 2)* (1916) 86 LJ Ch 89, where an action by a yearly tenant with an insignificant interest against a highway authority for removing a bank supporting a cottage was held to be vexatious.

5 *Simper v Foley* (1862) 2 John & H 555.

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179. Residents without any interest in the land.

A mere licensee cannot sue in private nuisance[1]. However, a 'tolerated trespasser' who has exclusive possession of premises after the end of his tenancy has sufficient interest in the land to enable him to sue[2]. If the defendant is a public authority, a resident with no proprietary interest, whose enjoyment of his home has been adversely affected, may be able to seek damages under Article 8 of the European Convention for the Protection of Human Rights[3] for interference with his private and family life[4].

1 *Hunter v Canary Wharf Ltd* [1997] AC 655, [1997] 2 All ER 426, HL (the extension of nuisance in a way which would transform it from a tort to land to a tort to the person is unacceptable). It had previously been held that a plaintiff who does not have any interest in the land may be able to sue in nuisance provided that he is lawfully and permanently resident at the premises in question: see *Khorasandjian v Bush* [1993] QB 727, [1993] 3 All ER 669, CA (where the plaintiff was awarded an injunction in respect of harassing telephone calls to which she had had been subjected at her parents' home where she lived); *Hunter v Canary Wharf Ltd* [1996] 1 All ER 482, [1996] 2 WLR 348, CA (revsd on this point [1997] AC 655, [1997] 2 All ER 426, HL). However, this decision was a departure from established principle.

It had been thought that an occupier's spouse might be able to recover by relying directly upon the statutory right of occupation: see *Motherwell v Motherwell* (1976) 73 DLR (3d) 62 at 78, Alta SC, where the Alberta Supreme Court held that an owner's wife was entitled to restrain persistent harassing telephone calls to the matrimonial home. The House of Lords has now made clear that this is not so: see *Hunter v Canary Wharf Ltd* above at 691-692 and 438-441 per Lord Goff, and at 708 and 453 per Lord Hoffman. Statutory protection from harassment is now afforded by the Protection from Harassment Act 1997: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 152-153.

2 *Pemberton v Southwark* [2000] 3 All ER 924, [2000] 1 WLR 1672, CA.

3 Ie the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) (commonly referred to as the 'European Human Rights Convention'), which is contained in the Human Rights Act 1998 s 1(3), Sch 1; see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

4 See *Dobson v Thames Water Utilities* [2009] EWCA Civ 28, [2009] 3 All ER 319, 122 ConLR 32.

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180. Action under the rule in *Rylands v Fletcher*.

Liability under the rule in *Rylands v Fletcher*[1] is owed to the person whose property is damaged as a result of the escape. It has been held that the right of action is not limited to adjoining occupiers[2]. The rule applies to damage to property but almost certainly not to personal injuries[3].

1 As to the rule in *Rylands v Fletcher* (1868) LR 3 HL 330 see PARA 148.

2 *Charing Cross Electricity Supply Co v Hydraulic Power Co* [1914] 3 KB 772, CA. Whether this is still the law is open to doubt in view of the insistence of the House of Lords that the rule in *Rylands v Fletcher* is closely related to the tort of nuisance: see *Cambridge Water Co Ltd v Eastern Counties Leather plc* [1994] 2 AC 264, [1994] 1 All ER 53; *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61, [2004] 2 AC 1, [2004] 1 All ER 589. See also PARA 147. A proprietary interest in the land affected is normally required for a claim in nuisance: see *Hunter v Canary Wharf Ltd* [1997] AC 655, [1997] 2 All ER 426, HL; and PARA 179.

3 See *Transco plc v Stockport Metropolitan Borough Council* [2003] UKHL 61 at [35], [2004] 2 AC 1 at [35], [2004] 1 All ER 589 at [35] per Lord Hoffman; and PARA 148 note 7.

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(ii) Who is Liable to be Sued

181. General rule of liability.

Any person is liable for a nuisance who either creates or causes it, or continues or adopts it, or who authorises its creation or continuance[1]. The liability applies whether or not that person is in occupation of the land on which the nuisance is committed[2]. However, an occupier will not be liable for a nuisance created by a trespasser without his knowledge, actual or constructive, or consent[3]. A person is liable as having caused or continued a nuisance when he is guilty of an act or omission which directly gives rise to the nuisance[4]; when he authorises such an act or omission[5]; when inadvertently he does or authorises an act from which a nuisance arises as a natural and probable consequence[6]; or when, being an owner or occupier of property, he grants a licence or gives an order to another to do acts upon it which are likely to cause a nuisance, and that licensee or person receiving the order in so acting commits a nuisance[7]. It is a prerequisite of the recovery of damages in both private and public nuisance that the harm for which compensation is sought should have been foreseeable[8]. Even foreseeable interference will not constitute a nuisance if it results merely from the ordinary use of premises and is an inevitable consequence of the way in which those premises were built, provided that that method of construction was lawful at the time[9].

1 As to the continuance or adoption of a nuisance see PARA 182. It may be important whether the defendant created or merely continued the nuisance, for if he merely continued it the claimant must prove want of care on the defendant's part, whereas if the defendant created the nuisance the burden is on him to exculpate himself: *Radstock Co-operative and Industrial Society Ltd v Norton-Radstock UDC* [1968] Ch 605, [1968] 2 All ER 59, CA (doubted, but not on this point, in *Bybrook Barn Centre Ltd v Kent County Council* [2001] LGR 239, [2000] NPC 135).

2 *Dalton v Angus* (1881) 6 App Cas 740, HL; and see the cases cited in PARA 107 note 3. See also *L E Jones (Insurance Brokers) Ltd v Portsmouth City Council* [2002] EWCA Civ 1723, [2003] 1 WLR 427, 87 ConLR 169 (liability based upon the degree of control that the defendant had to prevent the nuisance rather than upon its occupation of the land).

3 *Sedleigh-Denfield v O'Callaghan* [1940] AC 880 at 904, [1940] 3 All ER 349 at 365, HL, per Lord Wright; *Wringe v Cohen* [1940] 1 KB 229, [1939] 4 All ER 241, CA; *Page Motors Ltd v Epsom and Ewell Borough Council* (1982) 80 LGR 337, [1982] JPL 572, CA. An occupier may be liable for failing to prevent his licensees from trespassing and causing a nuisance on adjacent land: *Lippiatt v South Gloucestershire Council* [2000] QB 51, [1999] 4 All ER 149, CA. An owner of property who either in law or in practice exercises control over the condition of the premises is liable to a third person who is injured as a result of disrepair: *Mint v Good* [1951] 1 KB 517, [1950] 2 All ER 1159, CA; and see *Brew Bros Ltd v Snax (Ross) Ltd* [1970] 1 QB 612, [1970] 1 All ER 587, CA; and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 474. Cf *Habinteg Housing Association v James*

(1994) 27 HLR 299, CA (housing association had insufficient degree of control over properties on its estate to render it liable for an infestation of cockroaches).

4 *Corby v Hill* (1858) 4 CBNS 556, where the defendant was liable for injury caused by obstructing a private road with building material, put there with the consent of the owner; *King v Ford* (1816) 1 Stark 421 (schoolmaster permitting scholar to let off fireworks); *Ex p Liverpool Corpn* (1857) 22 JP 562 (corporation liable for the nuisance from the drainage of a prison it had built, and not the justices having management of the prison) (as to joint nuisances see PARA 114); and cf *R v Bradford Navigation Co* (1865) 6 B & S 631; *A-G v Bradford Canal Proprietors* (1866) LR 2 Eq 71 (continuing to exercise right of abstracting water after the source had become polluted); *St Helens Chemical Co v St Helens Corpn* (1876) 1 Ex D 196; *Ogston v Aberdeen District Tramways Co* [1897] AC 111, HL (sweeping snow into heaps and melting it with salt); *Hall v Duke of Norfolk* [1900] 2 Ch 493, where the owner of minerals was not liable for subsidence caused by the working of his predecessor in title; but see *Riddell v Spear* (1879) 40 LT 130, DC (tenant cutting sewer made without his consent by his landlord through the demised land); *Young v Fosten* (1893) 69 LT 147, DC (building contractor liable under a statute for nuisance caused by bad repair of sanitary apparatus); *Sedleigh-Denfield v O'Callaghan* [1940] AC 880, [1940] 3 All ER 349, HL; *Hilton v James Smith & Sons (Norwood) Ltd* [1979] 2 EGLR 44, 251 Estates Gazette 1063, CA (failure by defendant to enforce his covenants against lessees whose vehicles constituted a nuisance to the plaintiff). In *Dwyer v Mansfield* [1946] KB 437, [1946] 2 All ER 247, it was held that a nuisance in the form of a queue of people outside a shop had not been caused by improper methods of sale but by scarcity of goods.

5 *R v Longton Gas Co* (1860) 2 E & E 651 (householder authorising disturbance of a street in order to effect connection with a gas main for which there was no statutory authority); cf *Igoe v Eveleigh* (1870) IR 4 CL 238; *Stewart v Adams* 1920 SC 129, Ct of Sess (deposit of poisonous matter on grazing land). A housing corporation has been held not liable for allowing into a house offensive undesirable tenants whom it knew were likely to cause a nuisance; it did not impliedly authorise the nuisance: *Smith v Scott* [1973] Ch 314, [1972] 3 All ER 645. A landlord will not be liable for wholly unauthorised acts by his tenants unrelated to the use of his land: *Hussain v Lancaster City Council* [2000] QB 1, [1999] 4 All ER 125 (local authority not liable for racial harassment of neighbouring shopkeepers by its tenants).

6 *R v Moore* (1832) 3 B & Ad 184; *Bostock v North Staffordshire Rly Co* (1852) 5 De G & Sm 584; *Walker v Brewster* (1867) LR 5 Eq 25 (causing crowds to collect by attractions). See also *Inchbald v Robinson, Inchbald v Barrington* (1869) 4 Ch App 388; *Lyons Sons & Co v Gulliver* [1914] 1 Ch 631, CA; cf *Chase v LCC and Leslie & Co Ltd* (1898) 62 JP 184; and see *Brown v Bussell* (1868) LR 3 QB 251 (making drain to discharge into open ditch); *Smith v London and South Western Rly Co* (1870) LR 6 C P 14, Ex Ch (hedge trimmings by side of railway ignited); *St Helens Chemical Co v St Helens Corpn* (1876) 1 Ex D 196 (discharging into a sewer by different drains, which on meeting caused chemical nuisance); *Chibnall v Paul & Son* (1881) 29 WR 536 (arranging urinal so as to induce nuisance); *Gibbings v Hungerford and Cork Corpn* [1904] 1 IR 211, Ir CA (local authority held liable for nuisance caused by a third person draining sewage through the authority's pipes on to the land of plaintiff who had given the authority leave to discharge surface water); *Middleton v Humphries* (1913) 47 ILT 160 (roots of trees growing in and penetrating from defendant's land under plaintiff's boundary wall and causing it to fall), applied in *Butler v Standard Telephones and Cables Ltd* [1940] 1 KB 399, [1940] 1 All ER 121; *Mudge v Penge Urban Council* (1916) 86 LJ Ch 126 (erection of public urinal); *Kimber v Gas Light and Coke Co* [1918] 1 KB 439, CA (contractor's workmen leaving unfenced hole on stairs); *Morrow v Stepney Corpn* (1920) 18 LGR 458 (injunction and damages granted for nuisance caused by deposit of grit, dust and ashes); *Castle v St Augustine's Links Ltd* (1922) 38 TLR 615 (golf club liable for injury caused by ball struck near highway).

7 See *Tetley v Chitty* [1986] 1 All ER 663 (council letting land for use as a go-kart track). See also *Draper v Sperring* (1861) 10 CBNS 113 (owner of market held liable for nuisance from sheep droppings in pens let to third persons); *White v Jameson* (1874) LR 18 Eq 303 (permission to burn bricks on defendant's land); *Harris v James* (1876) 45 LJQB 545; *Jenkins v Jackson* (1888) 40 ChD 71 (letting room over offices for dancing); *Phillips v Thomas* (1890) 62 LT 793; *Howland v Dover Harbour Board* (1898) 14 TLR 355, CA; *Metropolitan Properties v Jones* [1939] 2 All ER 202 (landlord liable for nuisance from apparatus which he installed and not tenant who only used it as was intended). If the licensor is not in occupation, it must be proved that he had notice of the nuisance and refused to terminate the licence (*Cornford v Havant and Waterloo UDC* (1933) 97 JP 137); but if the licence is irrevocable or he grants a lease, he parts with control over the user of the land and he therefore is not liable (*White v Jameson* above). Cf *Atkinson v King* (1878) 2 LR Ir 320, Ir CA; and see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 474.

8 *Cambridge Water Co Ltd v Eastern Counties Leather plc* [1994] 2 AC 264 at 301, [1994] 1 All ER 53 at 72, HL, per Lord Goff of Chievely. See also *Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd, The Wagon Mound (No 2)* [1967] 1 AC 617, [1966] 2 All ER 709, PC.

9 In *Southwark London Borough Council v Mills; Baxter v Camden London Borough Council* [2001] 1 AC 1, [1999] 4 All ER 449, HL, the thinness of the walls of the defendants' flat meant that the ordinary sounds of day to day living were clearly audible in the adjoining premises. Neither landlord nor tenant were liable: the flat had been lawfully constructed and it was irrelevant that regulations require newer buildings to provide better sound insulation.

182. Continuance or adoption of nuisance.

An occupier of land is liable for a nuisance, even though he has not created it, if he has continued it while he is in occupation[1]. Further, the occupier will be liable for a nuisance created after he became the occupier if he had knowledge, actual or constructive, of its existence[2]. An occupier of land continues a nuisance if, with knowledge (actual or constructive) of its existence, he fails to take reasonable steps to bring it to an end[3]; and, if he makes use of the building or other artificial contrivance which constitutes the nuisance, he adopts it[4].

An occupier also has a common law duty to prevent his land from continuing to be the site of a public nuisance, even though he has not created the nuisance[5].

To establish liability for continuing a nuisance by failing to prevent it, the person so failing must generally be in a position to take effective steps to that end[6]. However, a person is liable for the continuance of a nuisance when he has originally created a nuisance which in the nature of things is likely to be continued and is continued, even though he has ceased to be in possession of or interested in the land on which the nuisance exists, and has no power to remove it without being guilty of a trespass[7]; or when he purchases the reversion of premises let to a tenant upon which there exists a nuisance for which the original reversioner would have been liable, even though he has no opportunity of putting an end to the existing tenancy or of abating the nuisance[8].

1 *Ryppon v Bowles* (1616) Cro Jac 373 (lessee of house with a nuisance); *Roswell v Prior* (1701) 12 Mod Rep 635; *Coupland v Hardingham* (1813) 3 Camp 398; *Thompson v Gibson* (1841) 7 M & W 456 (defendant lessor of obstructive buildings); *White v Jameson* (1874) LR 18 Eq 303 (permission to burn bricks on defendant's land); *A-G and Dommes v Basingstoke Corpn* (1876) 45 LJ Ch 726 (flow of sewage); *Broder v Saillard* (1876) 2 ChD 692; *Silverton v Marriott* (1888) 52 JP 677. An occupier is liable for continuing a nuisance which arises from natural causes: *Leakey v National Trust for Places of Historic Interest or Natural Beauty* [1980] QB 485, [1980] 1 All ER 17, CA (sloping bank which threatened houses below). See also *Page Motors Ltd v Epsom and Ewell Borough Council* (1982) 80 LGR 337, [1982] JPL 572, CA, where the landowner council was liable for adopting and continuing a nuisance created by gipsies on its land.

2 *Barker v Herbert* [1911] 2 KB 633, CA; *St Anne's Well Brewery Co v Roberts* (1928) 140 LT 1, CA; *Wilkins v Leighton* [1932] 2 Ch 106; *Slater v Worthington's Cash Stores (1930) Ltd* [1941] 1 KB 488, [1941] 3 All ER 28, CA (occupier liable for continuing public nuisance of accumulation of snow on roof overhanging public street); *Bybrook Barn Centre Ltd v Kent County Council* [2001] LGR 239, [2000] NPC 135 (liability for flooding caused when increased natural flow of stream rendered defendants' culvert inadequate). See also *Delaware Mansions Ltd v Westminster City Council* [2001] UKHL 55, [2002] 1 AC 321, [2001] 4 All ER 737, [2001] 3 WLR 1007 (highway authority liable, after ample notice of, and time to repair, damage, for continuing nuisance caused by tree roots).

3 In deciding what is reasonable, the defendant's actual financial and other circumstances must be taken into account if a serious expenditure of money is required to eliminate or reduce the danger: *Goldman v Hargrave* [1967] 1 AC 645, [1966] 2 All ER 989, PC; *Leakey v National Trust for Places of Historic Interest or Natural Beauty* [1980] QB 485, [1980] 1 All ER 17, CA.

4 See *Sedleigh-Denfield v O'Callaghan* [1940] AC 880 at 894, [1940] 3 All ER 349 at 358, HL, per Viscount Maugham; applied in *Cushing v Peter Walker & Son (Warrington and Burton) Ltd* [1941] 2 All ER 693 (slate on roof loosened by enemy bomb; defendants, having no knowledge, not liable). See also *Leanse v Lord Egerton* [1943] KB 323, [1943] 1 All ER 489 (loose glass in house damaged by air raid; knowledge presumed); *Caminer v Northern and London Investment Trust Ltd* [1949] 2 KB 64, [1949] 1 All ER 874, CA (affd [1951] AC 88, [1950] 2 All ER 486, HL) (diseased elm tree; duty of a reasonable occupier); *Pemberton v Bright* [1960] 1 All ER 792, [1960] 1 WLR 436, CA.

5 *A-G v Tod Heatley* [1897] 1 Ch 560, CA (public nuisance caused by persons throwing refuse on vacant site). It is not enough that the defendant knows or ought to know that the nuisance exists: *British Road Services Ltd v Slater* [1964] 1 All ER 816, [1964] 1 WLR 498 (a tree overhung the road, but it was not realised that it was a hazard to traffic until two lorries tried to pass each other opposite it; the defendant was not liable).

6 *Smeaton v Ilford Corpn* [1954] Ch 450 at 462, [1954] 1 All ER 923 at 927 per Upjohn J; but cf *R v Pedly* (1834) 1 Ad & El 822; *Dear v Thames Water* (1992) 33 Con LR 43; and see the text and notes 7-8.

7 *Roswell v Prior* (1701) 12 Mod Rep 635; *Thompson v Gibson* (1841) 7 M & W 456.

8 See *Sampson v Hodson-Pressinger* [1981] 3 All ER 710, 12 HLR 40, CA. See also *R v Pedly* (1834) 1 Ad & El 822. As to the liability of occupiers and owners of premises see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARAS 474, 476.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/2. LEGAL PROCEEDINGS AND DEFENCES/(2) ACTION FOR PRIVATE NUISANCE/(ii) Who is Liable to be Sued/183. Nuisance created by independent contractor.

183. Nuisance created by independent contractor.

Where a principal employs an independent contractor[1] to execute work for him, he may, in certain circumstances, still be liable for injury arising from a nuisance caused by the independent contractor. A person who orders work to be executed on his own premises, lawful in itself but from which, in the natural course of things, injurious consequences to his neighbour must be expected to arise unless means are adopted by which such consequences may be prevented, is bound to take all reasonable measures to prevent the mischief; and he cannot relieve himself of his responsibility by employing someone else, whether it be the contractor employed to do the work from which the danger arises or some independent person, to do what is necessary to prevent the act he has ordered to be done from becoming wrongful[2].

1 As to independent contractors see **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS AND SURVEYORS** vol 4(3) (Reissue) PARAS 170-171; **EMPLOYMENT** vol 39 (2009) PARAS 1-2.

2 *Bower v Peate* (1876) 1 QBD 321 at 326; applied in *Spicer v Smee* [1946] 1 All ER 489 (defective electric wiring). See also *Matania v National Provincial Bank Ltd and Elevenist Syndicate Ltd* [1936] 2 All ER 633, CA; *Alcock v Wraith* (1991) 59 BLR 20, CA. If appropriate precautions are taken an otherwise dangerous activity will not give rise to liability for damage caused by an independent contractor: *Biffa Waste Services Ltd v Maschinenfabrik Ernst Hese GmbH* [2008] EWCA Civ 1257, [2009] 3 WLR 324, [2009] BLR 1.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/2. LEGAL PROCEEDINGS AND DEFENCES/(2) ACTION FOR PRIVATE NUISANCE/(ii) Who is Liable to be Sued/184. Nuisance created by employee or agent.

184. Nuisance created by employee or agent.

A person is liable for a nuisance committed by his employee or agent in the course of his employment and within its scope[1]. However, the liability of the employer does not arise where the employee or agent acts beyond the scope of his employment[2].

1 *Laugher v Pointer* (1826) 5 B & C 547 at 576 per Abbott CJ. See also *Stone v Cartwright* (1795) 6 Term Rep 411; *Bush v Steinman* (1799) 1 Bos & P 404; *Armitage Ltd v Nicholson* (1913) 108 LT 993; *Pope v Fraser and Southern Rolling and Wire Mills Ltd* (1938) 55 TLR 324 (creation of dangerous acid in the highway and failure to prevent injury); **AGENCY** vol 1 (2008) PARAS 150-151, 155; **EMPLOYMENT** vol 39 (2009) PARAS 33, 40, 80. As to the general principles of liability see **TORT**.

2 *Lord Bolingbroke v Swindon New Town Local Board* (1874) LR 9 CP 575. See also **EMPLOYMENT** vol 39 (2009) PARA 39.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/2. LEGAL PROCEEDINGS AND DEFENCES/(2) ACTION FOR PRIVATE NUISANCE/(ii) Who is Liable to be Sued/185. Liability of public bodies.

185. Liability of public bodies.

Public bodies in which property or works are vested for public purposes, whether for profit or not, are liable for nuisances in the same way as other persons are liable[1], unless protected by statute.

The Crown is liable for torts committed by its servants or agents, and for any breach of the duties attaching at common law to the ownership, occupation, possession or control of property[2].

1 *Foster v Warblington UDC* [1906] 1 KB 648, CA; *Phillimore v Watford RDC* [1913] 2 Ch 434, where an injunction was granted restraining the flow of sewage into an agricultural ditch, and damages were awarded; *Webster v Bakewell Rural Council (No 2)* (1916) 86 LJ Ch 89, where an action against a highway authority for damage to a building caused by the removal of a roadside bank was held to be vexatious; *Pemberton v Bright* [1960] 1 All ER 792, [1960] 1 WLR 436, CA, where a local authority was held to be liable for damage caused by flooding on land adjacent to a highway; *Dunton v Dover District Council* (1977) 76 LGR 87, where a local authority was held to be liable for noise emanating from a children's play area adjacent to a residential hotel. As to the liability of a local authority in respect of a nuisance committed by a member of the public on a pleasure ground managed by the authority see *Hall v Beckenham Corpn* [1949] 1 KB 716, [1949] 1 All ER 423; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 556.

2 See generally **CROWN PROCEEDINGS AND CROWN PRACTICE**.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/2. LEGAL PROCEEDINGS AND DEFENCES/(2) ACTION FOR PRIVATE NUISANCE/(ii) Who is Liable to be Sued/186. Liability under the rule in Rylands v Fletcher.

186. Liability under the rule in *Rylands v Fletcher*.

The person liable under the rule in *Rylands v Fletcher*[1] is the person who has accumulated on his land, and exercises control over, the thing that escapes[2]. He is liable if his independent contractor causes the escape[3]. Further, the occupier of the land from which the thing escapes is also liable if it is brought or collected on his land with his authority[4], but not otherwise.

An owner out of possession of the land at the time the escape takes place and who has not authorised the accumulation on his land is not liable under this rule[5].

1 As to the rule in *Rylands v Fletcher* (1868) LR 3 HL 330 see PARA 148.

2 *St Anne's Well Brewery v Roberts* (1928) 140 LT 1, CA. A landlord who has let premises to undesirable tenants is not treated as being in control of them when they damage neighbouring property: *Smith v Scott* [1973] Ch 314, [1972] 3 All ER 645.

3 *Fletcher v Rylands* (1866) LR 1 Exch 265; affd sub nom *Rylands v Fletcher* (1868) LR 3 HL 330. See also *E Hobbs (Farms) v Baxenden Chemical Co Ltd, Gerber Foods (Holdings) Ltd v E Hobbs (Farms) Ltd* [1992] 1 Lloyd's Rep 54.

4 *Rainham Chemical Works Ltd v Belvedere Fish Guano Co* [1921] 2 AC 465, HL.

5 *St Anne's Well Brewery Co v Roberts* (1928) 140 LT 1, CA.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/2. LEGAL PROCEEDINGS AND DEFENCES/(3) ACTION FOR PUBLIC NUISANCE/187. Private action on public nuisance.

(3) ACTION FOR PUBLIC NUISANCE

187. Private action on public nuisance.

A private individual or a public authority[1] may bring an action in his or its own name in respect of a public nuisance when, and only when, he or it can show that he or it has suffered some particular, foreseeable[2] and substantial damage over and above that sustained by the public at large[3], or when the interference with the public right involves a violation of some private right of his or its own[4].

1 See PARA 188. In *Gravesham Borough Council v British Railways Board* [1978] Ch 379, [1978] 3 All ER 853, the Port of London Authority would have been able to sue had it proved that when British Rail discontinued a ferry across the Thames the inconvenience to the authority's employees caused it financial loss.

2 *Overseas Tankship (UK) Ltd v Miller Steamship Co Pty, The Wagon Mound (No 2)* [1967] 1 AC 617 at 636, [1966] 2 All ER 709 at 714, PC.

3 *William's Case* (1592) 5 Co Rep 72b; *Mary's Case* (1612) 9 Co Rep 111b at 113a; *Paine v Partrich* (1690) Carth 191; *Iveson v Moore* (1699) 1 Ld Raym 486; *Rose v Miles* (1815) 4 M & S 101; *A-G v Forbes* (1836) 2 My & Cr 123; *Ricket v Metropolitan Rly Co* (1865) 5 B & S 156; *Whelan v Hewson* (1871) IR 6 CL 283; *Blundy Clark & Co Ltd v London and North Eastern Rly Co* [1931] 2 KB 334, CA; *Harper v GN Haden & Sons Ltd* [1933] Ch 298, CA. See also PARA 108; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 336. In *Halsey v Esso Petroleum Co Ltd* [1961] 2 All ER 145, [1961] 1 WLR 683, the plaintiff recovered in public nuisance both for damage to his vehicle on the highway and for interference with his sleep.

4 *Boyce v Paddington Borough Council* [1903] 1 Ch 109.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/2. LEGAL PROCEEDINGS AND DEFENCES/(3) ACTION FOR PUBLIC NUISANCE/188. Proceedings by local authorities alone.

188. Proceedings by local authorities alone.

A local authority may take civil proceedings in its own name in respect of a public nuisance when it has suffered some particular, foreseeable and substantial damage over and above that sustained by the public at large[1]. In addition, where a local authority considers it expedient for the promotion or protection of the interests of the inhabitants of its area it may institute civil proceedings in its own name[2].

1 *Sheringham UDC v Halsey (or Holsey)* (1904) 68 JP 395, 20 TLR 402 (action in respect of a post belonging to the council and put up to protect a pathway from being used for carriages); cf *Exeter Corpn v Earl of Devon* (1870) LR 10 Eq 232; *Stoke Parish Council v Price* [1899] 2 Ch 277; *A-G and Spalding RDC v Garner* [1907] 2 KB 480.

2 See the Local Government Act 1972 s 222; and *Stoke-on-Trent Council v B & Q (Retail) Ltd* [1984] AC 754, [1984] 2 All ER 332, HL; *Kirklees Metropolitan Borough Council v Wickes Building Supplies Ltd* [1993] AC 227, [1992] 3 All ER 717, HL (both cases concerned with enforcement of the Sunday trading laws then applicable). See also **LOCAL GOVERNMENT** vol 69 (2009) PARA 573.

A local authority may be granted an injunction under the Local Government Act 1972 s 222 for the protection or promotion of the interests of the inhabitants of the area, restraining the contravention of a notice served under the Control of Pollution Act 1974 s 60 even though the contravention had not been shown to be a criminal offence: see *City of London Corpn v Bovis Construction Ltd* [1992] 3 All ER 697, 49 BLR 1, CA.

In the same proceedings as those in which a local authority seeks an injunction under the Local Government Act 1972 s 222, individuals may seek the same injunction on the ground that the public nuisance caused them special damage: see *Gravesham Borough Council v British Railways Board* [1978] Ch 379, [1978] 3 All ER 853.

A local authority may be granted an injunction prohibiting anti-social behaviour, and the injunction may have a power of arrest attached: see the Housing Act 1996 ss 153A-154; and **HOUSING** vol 22 (2006 Reissue) PARA 268 et seq.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/2. LEGAL PROCEEDINGS AND DEFENCES/(3) ACTION FOR PUBLIC NUISANCE/189. Actions in the name of, and by, the Attorney General.

189. Actions in the name of, and by, the Attorney General.

All civil proceedings[1] brought in respect of public nuisance other than a private action by an individual who, or a public or local authority which, has suffered particular damage[2] or an action brought by a local authority in its own name to protect the inhabitants of its area[3] must be brought with the sanction and in the name of the Attorney General[4]. This rule applies whether it is an individual or a local or other public authority who seeks to proceed.

1 As to the jurisdiction in civil proceedings see PARA 173.

2 See PARA 187.

3 See PARA 188.

4 *Wallasey Local Board v Gracey* (1887) 36 ChD 593; *Tottenham UDC v Williamson & Sons Ltd* [1896] 2 QB 353, CA; see also *Baines v Baker* (1752) Amb 158 (smallpox hospital); *Ware v Regent's Canal Co* (1858) 3 De G & J 212; *Bermondsey Vestry v Brown* (1865) LR 1 Eq 204 (right of way); *Stoke Parish Council v Price* [1899] 2 Ch 277; *Boyce v Paddington Borough Council* [1903] 1 Ch 109; *Watson v Hythe Borough Council* (1906) 70 JP 153; *O'Shea v Cork RDC* [1914] 1 IR 16. As to relator actions generally see *Gouriet v Union of Post Office Workers* [1978] AC 435, [1977] 3 All ER 70, HL; and **CIVIL PROCEDURE** vol 11 (2009) PARAS 236-237.

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190. Relators.

Any person, whether affected by the nuisance or not, may act as relator in proceedings by the Attorney General[1], and so may a local authority[2], but a relator is not essential and the Attorney General may proceed by an ex officio information, there being no difference in the two proceedings except in the matter of costs[3], for which the relator renders himself liable[4], even though otherwise he is not a party to the action[5].

1 See *A-G and Dommes v Basingstoke Corpn* (1876) 45 LJ Ch 726; *A-G v Logan* [1891] 2 QB 100.

2 *A-G v Logan* [1891] 2 QB 100; *A-G v Roe* [1915] 1 Ch 235.

3 See *A-G v Cockermouth Local Board* (1874) LR 18 Eq 172 at 176; *A-G v Logan* [1891] 2 QB 100.

4 See *A-G v Logan* [1891] 2 QB 100. As to relator actions generally see *Gouriet v Union of Post Office Workers* [1978] AC 435, [1977] 3 All ER 70, HL; and **CIVIL PROCEDURE** vol 11 (2009) PARAS 491-492; and **CIVIL PROCEDURE** vol 11 (2009) PARAS 236-237.

5 See *A-G v Logan* [1891] 2 QB 100; and note 4.

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191. Joinder of claimants with Attorney General.

A local authority and a private individual having a valid right of action in respect of the special injury sustained through a public nuisance may join as claimants in the proceedings of the Attorney General in respect of their special injury[1].

1 *A-G v Birmingham Borough Council* (1858) 4 K & J 528; *A-G v Earl of Lonsdale* (1868) LR 7 Eq 377; *A-G v Gee* (1870) LR 10 Eq 131; *A-G v Cockermouth Local Board* (1874) LR 18 Eq 172; *A-G v Logan* [1891] 2 QB 100. So, too, the relators may in the same proceedings recover damages for private nuisance: *A-G v Gastonia Coaches Ltd* [1977] RTR 219.

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(4) DEFENCES

192. Statutory authority.

Although the Crown cannot grant to a person a right to commit a public nuisance[1], an act or omission may have been specifically authorised by statute, and may, therefore, not be actionable either as a public or as a private nuisance[2]. For the defence of statutory authority to be successfully raised, however, it must be shown that the act was within the powers conferred by the statute[3]. A local highway authority or the conservators of a navigable river can therefore legalise an obstruction or encroachment to the public right of passage[4] providing they are authorised by statute to give their consent to what would amount to a nuisance in the absence of such statutory powers[5].

If a nuisance is the inevitable consequence of what has been authorised the defence will be available by necessary implication even if the statute does not expressly authorise the commission of a nuisance in so many words[6]. If, on the other hand, the statute authorises a particular act only if no nuisance is caused, statutory authority will be no defence to a claim in nuisance[7]. But a body acting under a statutory duty, as distinct from a mere power, will not be liable for nuisance, even if such liability is expressly preserved by the statute, unless the nuisance was caused negligently[8].

A grant of planning permission under statutory powers must not be confused with statutory authority, since such a grant cannot license nuisances[9]. In exceptional cases, however, it is possible that planning permission might enable the whole character of a neighbourhood to be

changed and thereby render innocent activities which would previously have constituted nuisances[10].

1 *A-G v Burridge* (1822) 10 Price 350. The Crown cannot make grants interfering with the public right of navigation or fishing in navigable rivers: *A-G v Parmeter* (1811) 10 Price 378 (on appeal sub nom *Parmeter v Gibbs, Re Portsmouth Harbour* (1813) 10 Price 412, HL); *Williams v Wilcox* (1838) 8 Ad & El 314; *Colchester Corpn v Brooke* (1846) 7 QB 339; *Malcomson v O'Dea* (1863) 10 HL Cas 593; *Gann v Whitstable Free Fisheries* (1865) 11 HL Cas 192; *Simpson v A-G* [1904] AC 476, HL.

2 For the defence of statutory authority generally and for express statutory provisions preserving liability to third persons see eg **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 194; **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 538; **WATER AND WATERWAYS** vol 101 (2009) PARAS 490, 498, 672.

3 See *Tate & Lyle Industries Ltd v Greater London Council* [1983] 2 AC 509, [1983] 1 All ER 1159, HL (liability for siltation of river, and consequent interference with public navigation rights, caused under purported exercise of statutory powers). See also *Jones v Festiniog Rly Co* (1868) LR 3 QB 733 (liability for damage caused by a spark from a locomotive engine, the use of which was not authorised by the statute); *Roberts v Haines* (1856) 6 E & B 643 (affd sub nom *Haines v Roberts* (1857) 7 E & B 625) (subsidence caused under purported exercise of statutory rights); *Tunbridge Wells Corpn v Baird* [1896] AC 434, HL (interference with subsoil beyond statutory powers); *London and North Western Rly Co v Westminster Corpn* [1904] 1 Ch 759, CA (revsd on the facts, but not on the principle of law [1905] AC 426 at 432, HL).

4 *R v Lord Grosvenor* (1819) 2 Stark 511; *Kearns v Cordwainers' Co* (1859) 6 CBNS 388; *R v United Kingdom Electric Telegraph Co Ltd* (1862) 31 LJMC 166, 2 B & S 647n; *A-G v Thames Conservators* (1862) 1 Hem & M 1; *R v Train* (1862) 2 B & S 640; *Hawkins v Robinson* (1872) 36 JP 756 (on appeal 37 JP 662); *Preston Corpn v Fulwood Local Board* (1885) 53 LT 718; *A-G v Barker* (1900) 83 LT 245; *A-G v Mayo County Council* [1902] 1 IR 13; *Harvey v Truro RDC* [1903] 2 Ch 638.

5 *A-G v Cambridge Consumers' Gas Co* (1868) LR 6 Eq 282; on appeal 4 Ch App 71. Cf *Tate & Lyle Food and Distribution v Greater London Council* [1983] 2 AC 509, [19083] 1 All ER 1159, HL (obstruction of river held to be outside the statutory powers).

6 *Allen v Gulf Oil Refining Ltd* [1981] AC 1001, [1981] 1 All ER 353, HL (authorisation for construction of oil refinery necessarily authorised unavoidable nuisances arising from its operation). Cf *Manchester Corpn v Farnworth* [1930] AC 171, HL.

7 *Manchester Corpn v Farnworth* [1930] AC 171, HL; *Buley v British Railways Board* [1975] CLY 2458, CA.

8 *Department of Transport v North West Water Authority* [1984] AC 336, [1983] 3 All ER 273, HL (no liability when water main burst without negligence).

9 *Wheeler v JJ Saunders Ltd* [1996] Ch 19, [1995] 2 All ER 697, CA. See also *Hunter v Canary Wharf Ltd* [1997] AC 655, [1997] 2 All ER 426, HL.

10 *Gillingham Borough Council v Medway (Chatham) Dock Co Ltd* [1993] QB 343, [1992] 3 All ER 923. Cf *Wheeler v JJ Saunders Ltd* [1996] Ch 19, [1995] 2 All ER 697, CA. See also PARA 105.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/2. LEGAL PROCEEDINGS AND DEFENCES/(4) DEFENCES/193. Prescriptive right.

193. Prescriptive right.

A prescriptive right may have been acquired[1], but it cannot be successfully set up[2] where, during the period of user, the nuisance complained of has not been actionable or preventable by the claimant[3], or where the nuisance is appreciably in excess of the right acquired[4], or is materially different in character from that for which the right is acquired[5]; nor can a prescriptive right be acquired in respect of a public nuisance[6].

1 *Mason v Hill* (1833) 5 B & Ad 1; *Wright v Williams* (1836) 1 M & W 77; *Bealey v Shaw* (1805) 6 East 208; *Carlyon v Lovering* (1857) 1 H & N 784 at 797; *Holker v Porritt* (1875) LR 10 Exch 59, Ex Ch; and see the cases

cited in **EASEMENTS AND PROFITS A PRENDRE**; **WATER AND WATERWAYS** vol 100 (2009) PARA 70. The pollution of natural streams is illegal: see the Water Resources Act 1991 Pt III (ss 82-104); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 288 et seq. Consequently it is not possible to acquire a right by prescription to pollute a natural stream: *Hulley v Silversprings Bleaching and Dyeing Co Ltd* [1922] 2 Ch 268, following *Neaverson v Peterborough RDC* [1902] 1 Ch 557, CA. See also *Green v Matthews & Co* (1930) 46 TLR 206; **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARAS 214-215; **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 278 et seq; **WATER AND WATERWAYS** vol 100 (2009) PARA 89.

2 As to the prescriptive right which is essential to a successful plea, where the injury is an increasing one, see *Goldsmid v Tunbridge Wells Improvement Comrs* (1866) 1 Ch App 349 (affg (1865) LR 1 Eq 161); *Brown v Dunstable Corpn* [1899] 2 Ch 378 at 387.

3 *Sturges v Bridgman* (1879) 11 ChD 852, CA; *Goldsmid v Tunbridge Wells Improvement Comrs* (1866) 1 Ch App 349; *Liverpool Corpn v H Coghill & Son* [1918] 1 Ch 307. The failure to complain of noise for 20 years does not bar the right to complain where it has been increased, even though slightly: *Heather v Pardon* (1877) 37 LT 393.

4 *Brown v Best* (1747) 1 Wils 174; *Crossley & Sons Ltd v Lightowler* (1867) 2 Ch App 478; *Metropolitan Board of Works v London and North Western Rly Co* (1881) 17 ChD 246, CA; *A-G v Acton Local Board* (1882) 22 ChD 221; *Blackburne v Somers* (1879) 5 LR Ir 1; *Frechette v La Compagnie Manufacturière de St Hyacinthe* (1883) 9 App Cas 170, PC. See also *Gardner v Davis* [1999] EHLR 13, [1998] 29 LS Gaz R 28, CA (right to discharge sewage into septic tank does not extend to discharge onto servient tenement itself); and **EASEMENTS AND PROFITS A PRENDRE**.

5 *McIntyre Bros v McGavin* [1893] AC 268, HL; *Baxendale v McMurray* (1867) 2 Ch App 790; *Foster v Warblington UDC* [1906] 1 KB 648, CA; *Clarke v Somersetshire Drainage Comrs* (1888) 57 LJMC 96, DC; *Hulley v Silversprings Bleaching and Dyeing Co Ltd* [1922] 2 Ch 268.

6 *R v Cross* (1812) 3 Camp 224; *Dewell v Sanders* (1618) Cro Jac 490; *Vooght v Winch* (1819) 2 B & Ald 662; *A-G v Barnsley Corpn* [1874] WN 37; *Blackburne v Somers* (1879) 5 LR Ir 1; *Sheringham UDC v Halsey (or Holsey)* (1904) 68 JP 395, 20 TLR 402; *Harvey v Truro RDC* [1903] 2 Ch 638. See also **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 216; and see note 1.

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194. Contributory negligence.

The ordinary rules relating to pleas of contributory negligence[1] apply to nuisances based on negligent conduct[2]. The defences of consent[3] and assumption of risk[4] are also applicable.

1 This includes the apportionment provisions of the Law Reform (Contributory Negligence) Act 1945: see **NEGLIGENCE** vol 78 (2010) PARA 75 et seq.

2 *Trevett v Lee* [1955] 1 All ER 406 at 412, [1955] 1 WLR 113 at 122, CA, per Evershed MR (a case on the tort of public nuisance, but presumably applicable to private nuisance also). The claimant also has the normal duty in tort to take reasonable steps to mitigate his loss: *Davey v Harrow Corpn* [1958] 1 QB 60 at 63, [1957] 2 All ER 305 at 309, CA, per Jenkins LJ.

3 *Pwllbach Colliery Co Ltd v Woodman* [1915] AC 634, HL. See also **NEGLIGENCE** vol 78 (2010) PARAS 69-72.

4 *Kiddle v City Business Properties Ltd* [1942] 1 KB 269, [1942] 2 All ER 216; *Leakey v National Trust for Places of Historic Interest or Natural Beauty* [1980] 1 All ER 17 at 26, [1980] 2 WLR 65 at 75, CA, per Megaw LJ.

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195. Limitation of action.

Some nuisances are a continuing source of harm for which the creator remains responsible[1]. In such cases the nuisance gives rise to a fresh cause of action as often as fresh damage is caused[2]. All actions for nuisance are statute-barred if brought more than six years after the cause of action for the damage complained of arose[3], except that where the damages claimed consist of or include damages in respect of personal injuries the period of limitation is three years[4].

1 See PARAS 107, 182.

2 See *Whitehouse v Fellowes* (1861) 10 CBNS 765; *Battishill v Reed* (1856) 18 CB 696 at 714; and **LIMITATION PERIODS** vol 68 (2008) PARA 921.

3 See the Limitation Act 1980 s 2; and **LIMITATION PERIODS** vol 68 (2008) PARA 979.

4 See the Limitation Act 1980 s 11; and **LIMITATION PERIODS** vol 68 (2008) PARA 998 et seq. In such a case, however, the court has discretion to override the statutory time limit in certain circumstances: see s 33; and **LIMITATION PERIODS** vol 68 (2008) PARA 1001.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/2. LEGAL PROCEEDINGS AND DEFENCES/(4) DEFENCES/196. Self-protection against extraordinary danger.

196. Self-protection against extraordinary danger.

An owner or occupier is entitled to protect his land against an extraordinary danger which threatens it, even though he thereby makes it necessary for his neighbour either to take similar measures or to put up with the consequences of not doing so[1]. However, an owner or occupier is not entitled either to prevent injury to his own property by diverting a natural stream, whether tidal or not, or the accustomed flow of flood water, from its accustomed channel so as to throw it and its destructive effects on to his neighbour's land[2], or to rid himself of the consequences of a misfortune already suffered by diverting them to his neighbour's detriment[3]. It is the duty of anyone who interferes with the course of a stream to see that works substituted for the natural channel are adequate to carry off the water brought down even by extraordinary rainfall, and he is liable if damage results from the deficiency of the substitute[4].

1 *R v Pagham, Sussex, Sewers Comrs* (1828) 8 B & C 355 (erecting groynes to protect property from inroads by sea); *Nield v London and North Western Rly Co* (1874) LR 10 Exch 4 (damming a canal to protect banks against flood water); and see *Thomas v Birmingham Canal Co* (1879) 45 JP 21 (opening sluices in a heavy rainfall to protect a canal); *Ridge v Midland Rly Co* (1888) 53 JP 55; *Dewey v White* (1827) Mood & M 56; *Maxey Drainage Board v Great Northern Rly Co* (1912) 76 JP 236 (embankment to protect property from flood water); *Greyvensteyn v Hattingh* [1911] AC 355, PC (driving away locusts). As to the erection of groynes and other defences against water see **WATER AND WATERWAYS** vol 101 (2009) PARAS 501, 522 et seq.

2 *Menzies v Earl of Breadalbane* (1828) 3 Bli NS 414, HL; *R v Trafford* (1831) 1 B & Ad 874 (on appeal sub nom *Trafford v R* (1832) 8 Bing 204); and see *Bickett v Morris* (1866) LR 1 Sc & Div 47 at 56, HL, per Lord Chelmsford LC.

3 *Whalley v Lancashire and Yorkshire Rly Co* (1884) 13 QBD 131, CA.

4 *Greenock Corpn v Glasgow and South-Western Rly Co* [1917] AC 556 at 572, HL, per Lord Finlay LC.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/2. LEGAL PROCEEDINGS AND DEFENCES/(4) DEFENCES/197. Exceptions to the rule in Rylands v Fletcher.

197. Exceptions to the rule in *Rylands v Fletcher*.

The following exceptions to the rule in *Rylands v Fletcher*[1] may also be called defences:

57 (1) where the escape of the thing is caused by an act of God[2];
58 (2) where the escape is due to the act of a stranger over whose acts the defendant had no control and which was not an act which he ought reasonably to have anticipated and guarded against[3];
59 (3) where the escape was due to some act or default of the person who suffers the damage[4];
60 (4) where the presence of the thing which escapes has been consented to by the claimant[5];
61 (5) where the thing has been brought onto the land from which it escapes under statutory authority[6].

1 As to the rule in *Rylands v Fletcher* (1868) LR 3 HL 330 see PARA 148.

2 For discussion of heads (1)-(3) in the text see PARA 152.

3 See note 2.

4 See note 2.

5 See PARA 153.

6 See PARA 154.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/2. LEGAL PROCEEDINGS AND DEFENCES/(4) DEFENCES/198. Ineffectual defences.

198. Ineffectual defences.

Where, after taking all the circumstances into consideration, an annoyance is such as to amount to a nuisance, it cannot be justified on the ground that the place is a suitable or convenient one for the performance of the act which occasions the nuisance[1]; or that it arises from the carrying on of a trade, lawful in itself and properly conducted, for purposes necessary and beneficial to the community[2]; or that it arises from the defendant's use of his own property in a common and useful manner and for his own convenience[3]; or that the character of the neighbourhood has changed since the trade giving rise to the nuisance was established[4]; or that the nuisance, being a public one, has been authorised by the Crown or by a local authority, unless it has statutory powers to authorise it[5]; or that a prescriptive right has been acquired to commit a public nuisance[6]; or that the benefit to the public far exceeds the disadvantage to the claimant[7]; or that the claimant has come to the nuisance[8]; or that similar nuisances already exist in the locality when it is shown that the defendant materially increases the existing nuisance[9]; or that the claimant himself has committed a nuisance[10]; or that the nuisance complained of was done to prevent the claimant from reaping the benefit of a wrong which he had done to the defendant[11]; or that the defendant's act was in itself harmless until combined with the acts of others[12]; or that others were at fault in not having done their duty[13]; or that the

claimant's predecessor in title brought and compromised a previous action against the defendant to restrain the nuisance[14].

1 *Bamford v Turnley* (1862) 3 B & S 66, Ex Ch, overruling *Hole v Barlow* (1858) 4 CBNS 334; *Cavey v Ledbitter* (1863) 13 CBNS 470; *St Helen's Smelting Co v Tipping* (1865) 11 HL Cas 642; *Mudge v Penge Urban Council* (1916) 80 JP 436 (statement in defence that alleged nuisance, a urinal, was erected with a view to abating another nuisance struck out, without prejudice to defendant's right to prove that erection was proper public convenience erected in proper place and in bona fide exercise of statutory powers; varied 85 LJ Ch 814, CA, without deciding whether statement was relevant or not); and see PARAS 119 et seq, 147 et seq.

2 *R v Pierce* (1683) 2 Show 327; *Elliotson v Feetham* (1835) 2 Bing NC 134; *Stockport Waterworks Co v Potter* (1861) 7 H & N 160; *Scott v Firth* (1864) 10 LT 240; *West v White* (1877) 4 ChD 631; *Shelfer v City of London Electric Lighting Co* [1895] 1 Ch 287 at 316, CA.

3 *Walter v Selfe* (1851) 4 De G & Sm 315; and see PARAS 118-119.

4 *A-G v Cole & Son* [1901] 1 Ch 205; and see PARA 126.

5 See PARA 192. As to the possible effect of a grant of planning permission in certain cases see PARA 105.

6 See PARA 193.

7 *R v Morris* (1830) 1 B & Ad 441; *R v Ward* (1836) 4 Ad & El 384 (overruling in effect *R v Russell* (1827) 6 B & C 566); *Beardmore v Tredwell* (1862) 3 Giff 683: *R v Train* (1862) 2 B & S 640; *A-G v Mid-Kent Rly Co and South-Eastern Rly Co* (1867) 3 Ch App 100; *Raphael v Thames Valley Rly Co* (1867) 2 Ch App 147; *A-G v Cambridge Consumers Gas Co* (1868) 4 Ch App 71; *A-G v Terry* (1874) LR 9 Ch App 423; *A-G and Dommes v Basingstoke Corpn* (1876) 45 LJ Ch 726. However, if a comparatively trivial obstruction to a public way results in the way on the whole being more convenient to the public, the court may not think it right to interfere: see *A-G v Wilcox* [1938] Ch 934 at 941, [1938] 3 All ER 367 at 372 per Farwell J; and generally **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARAS 322, 324. It is a ground for refusing an injunction that the nuisance is in the public interest: *Miller v Jackson* [1977] QB 966, [1977] 3 All ER 338, CA; but cf *Kennaway v Thompson* [1981] QB 88, [1980] 3 All ER 329, CA.

8 *Elliotson v Feetham* (1835) 2 Bing NC 134; *Bliss v Hall* (1838) 4 Bing NC 183; *Mousley v Hutchinson* (1838) 7 LJCP 122n; *Tipping v St Helen's Smelting Co* (1865) 1 Ch App 66 (affd 11 HL Cas 642); see also *Crump v Lambert* (1867) LR 3 Eq 409 at 413 (affd 17 LT 133); *Sander v Manley and Rogers* [1878] WN 181; *Sturges v Bridgman* (1879) 11 ChD 852, CA; *Shotts Iron Co v Inglis* (1882) 7 App Cas 518, HL; *London, Brighton and South Coast Rly Co v Truman* (1885) 11 App Cas 45 at 52, HL; *Barber v Penley* [1893] 2 Ch 447 at 449; *A-G v Manchester Corpn* [1893] 2 Ch 87 at 95; *Miller v Jackson* [1977] QB 966, [1977] 3 All ER 338, CA (no defence to cricket club that the ground first became a nuisance only when the plaintiff built close to it); and see PARA 124 note 4.

9 *R v Neil* (1826) 2 C & P 485; *St Helen's Smelting Co v Tipping* (1865) 11 HL Cas 642; *Crump v Lambert* (1867) LR 3 Eq 409 (affd 17 LT 133); *Cooke v Forbes* (1867) LR 5 Eq 166 at 172; *Crossley & Sons Ltd v Lightowler* (1867) 2 Ch App 478; *A-G v Leeds Corpn* (1870) 5 Ch App 583; *Salvin v North Brancepeth Coal Co* (1874) 9 Ch App 705; *Polsue and Alfieri Ltd v Rushmer* [1907] AC 121, HL; and see PARAS 125-126.

10 *Colchester Corpn v Brooke* (1846) 7 QB 339.

11 *Ibottson v Peat* (1865) 3 H & C 644.

12 *Harrison v Great Northern Rly Co* (1864) 3 H & C 231; and see PARA 114.

13 *Bell v Twentyman* (1841) 1 QB 766; *Wettor v Dunk* (1864) 4 F & F 298; *Ogston v Aberdeen District Tramways Co* [1897] AC 111, HL; and see *A-G v Colney Hatch Lunatic Asylum* (1868) 4 Ch App 146. As to proceedings under the former public health legislation see *St Helens Chemical Co v St Helens Corpn* (1876) 1 Ex D 196, where the local authority was held entitled to take proceedings, although itself at fault in not flushing the sewers; cf *Fordom v Parsons* [1894] 2 QB 780, DC; *Wincanton RDC v Parsons* [1905] 2 KB 34, DC. In *A-G v Scott* [1904] 1 KB 404, CA, it was held that it was no answer to a motion by the Attorney General for an interim injunction to allege that the damage to a road by a traction engine would not have occurred but for the neglect of the relators to keep the road in proper repair; the court for this purpose assumed that a nuisance had been committed, but on the hearing of the action it was found that the nuisance had not been committed by the defendant (see *A-G v Scott* [1905] 2 KB 160, CA). In *Lyons, Sons & Co v Gulliver* [1914] 1 Ch 631, CA, it was held that the failure of the police to prevent obstruction of the plaintiff's premises did not afford a good defence.

14 *Hunt v WH Cook Ltd* (1922) 66 Sol Jo 557.

(5) PROCEEDINGS FOR STATUTORY NUISANCES

(i) Introduction

199. Statutory procedure for abatement of a nuisance.

In relation to those matters declared to constitute a statutory nuisance[1], the environmental protection legislation provides a special statutory procedure empowering a court to compel the person responsible[2] to take steps to abate the nuisance or to prevent its recurrence[3]. The statutory procedure may be instigated either by the service of an abatement notice[4] by the local authority[5] in whose area the statutory nuisance exists or is likely to occur[6], or by the making of a complaint to a magistrates' court by a person who is aggrieved by the existence of a statutory nuisance[7]. In the event of non-compliance, a local authority may take the steps itself[8] and recover the cost of the same[9]. Criminal[10] and civil[11] sanctions may be imposed upon the person responsible.

1 As to statutory nuisances see PARA 156. As to the meaning of 'nuisance' see PARA 159.

2 As to the meaning of 'person responsible' see PARA 201 note 4.

3 See PARA 200 et seq.

4 As to the meaning of 'abatement notice' see PARA 200. The statutory procedure may be founded upon a notice served under provisions which are subsequently repealed: *Aitken v South Hams District Council* [1995] 1 AC 262, [1994] 3 All ER 400, HL (overruling *R v Folkestone Justices, ex p Kibble* (1993) Times, 1 March, DC).

5 As to the meaning of 'local authority' see PARA 155 note 5.

6 See PARA 200 et seq. Failure to comply with an abatement notice is now an offence, as opposed to being a precondition to the making of a 'nuisance order': see the Environmental Protection Act 1990 s 80(4); *Aitken v South Hams District Council* [1995] 1 AC 262 at 269, [1994] 3 All ER 400 at 402-403, HL, per Lord Woolf; and PARA 203.

An 'intimation notice', ie a notice before an abatement notice indicating what is required in order to avoid the service of an abatement notice, has no statutory force. A person is not under an obligation to act on the basis of an intimation notice and has no entitlement to recover his costs from the person who, had a formal notice been served, would ultimately have had to pay for the works: *Harris v Hickman* [1904] 1 KB 13; *Valpy v St Leonard's Wharf Co Ltd* (1903) 1 LGR 305, 67 JP 402; cf *Andrew v St Olave's Board of Works* [1898] 1 QB 775; *Thompson and Norris Manufacturing Co Ltd v Hawse* (1895) 73 LT 369, 59 JP 580, CA; cf *North v Walthamstow UDC* (1898) 67 LJQB 972, 62 JP 836. However, if a local authority exerts pressure on an individual to carry out that which the local authority is obliged to carry out, there is an implied promise that the local authority will repay the individual for the cost of the work carried out by the individual: *Wilson's Music and General Printing Co v Finsbury London Borough Council* [1908] 1 KB 563; *Oliver v Camberwell London Borough Council* (1904) 68 JP 165, 90 LT 285, DC; *Haedicke v Friern Barnet UDC* [1904] 2 KB 807; *Silles v Fulham London Borough Council* [1903] 1 KB 829; *Ellis v Bromley RDC* (1899) 63 JP 711; cf *Proctor v Islington Corpn* (1902) 18 TLR 505, 1 LGR 652n (on appeal (1903) 67 JP 164, CA); *Self v Hove Comrs* [1895] 1 QB 685.

7 See PARA 210 et seq.

8 See PARA 207.

9 See PARAS 207-208.

10 See PARA 203.

11 See PARA 205.

(ii) Proceedings by a Local Authority

200. General requirements for an abatement notice.

Where a local authority[1] is satisfied that a statutory nuisance[2] exists, or is likely to occur or recur, within its area[3], the local authority must serve a notice (an 'abatement notice') imposing all or any of the following requirements[4]:

62 (1) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence[5];

63 (2) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes[6].

An abatement notice must set out the act that is, or the facts that constitute, a statutory nuisance[7]; but the notice need not specify whether the act is one which is prejudicial to health[8] or a common law nuisance[9]. Where the notice requires positive action to abate the nuisance (either expressly or because the only way in which the nuisance can be abated is by the carrying out of works or the taking of steps), as opposed to merely requiring that the act constituting the nuisance cease, the notice must specify the works to be carried out or the steps to be taken with some particularity[10] and without ambiguity[11]. What is specified must be sufficient to abate the nuisance[12]. In so far as a notice requires the recipient not to permit the occurrence or recurrence of a nuisance, no works need be specified[13]. The notice must specify the time or times within which its requirements are to be complied with[14], and the time permitted must be reasonable[15]; but the notice does not need to state a date upon which it expires[16]. Where an appeal lies to a magistrates' court[17], the notice must include a statement indicating that such an appeal lies and specifying the time within which it must be brought[18].

Where a statutory nuisance which exists or has occurred within the area of a local authority, or which has affected any part of that area, appears to the local authority to be wholly or partly caused by some act or default committed or taking place outside its area, the local authority may act under these provisions as if the act or default were wholly within its area[19].

1 As to the meaning of 'local authority' see PARA 155 note 5. A local authority must not without the consent of the Secretary of State institute summary proceedings under the Environmental Protection Act 1990 Pt III (ss 79-84) in respect of a nuisance falling within s 79(1)(b), (d), (e), (fb) or (g) (see PARA 156 heads (2), (4), (5), (8), (9)) if proceedings in respect of it might be instituted under Pt I (ss 1-28) or under regulations under the Pollution Prevention and Control Act 1999 s 2 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 186-187): Environmental Protection Act 1990 s 79(10) (amended by s 162, Sch 16 Pt I; the Pollution Prevention and Control Act 1999 s 6, Sch 2 para 6, Sch 3; the Clean Neighbourhoods and Environment Act 2005 s 102(1), (8); and SI 2000/1973). As from a day to be appointed, the Environmental Protection Act 1990 Pt I, and the reference in s 79(10) to Pt I, is repealed: see the Pollution Prevention and Control Act 1999 Sch 3; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 159. As to pollution control see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 158 et seq. As to the Secretary of State see PARA 129 note 7.

The Secretary of State has default powers if he is satisfied that any local authority has failed in any respect to discharge its functions of entry and inspection under the Environmental Protection Act 1990 s 79 (see PARA 156 et seq) and Sch 3 para 2 or Sch 3 para 2A (see PARA 206): see Sch 3 para 4.

Nothing done by, or by a member of, a local authority or by any officer of or other person authorised by a local authority, if done in good faith for the purpose of executing Pt III, subjects them or any of them personally to

any action, liability, claim or demand whatsoever (other than a liability under the Audit Commission Act 1998 s 17: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 772): Environmental Protection Act 1990 Sch 3 para 5 (amended by the Audit Commission Act 1998 s 54(1), Sch 3 para 21).

2 As to statutory nuisances see PARA 156. As to the meaning of 'nuisance' see PARA 159.

3 As to the area of a local authority see PARA 155 note 5. As to the power of a local authority where the nuisance within its area is caused by some act or default committed or taking place outside its area see the text to note 19.

4 Environmental Protection Act 1990 s 80(1) (amended by the Clean Neighbourhoods and Environment Act 2005 s 86). Where a local authority is satisfied that a statutory nuisance falling within the category of noise emitted from premises so as to be prejudicial to health or a nuisance (ie within the Environmental Protection Act 1990 s 79(1)(g): see PARA 156 head (9)) exists, or is likely to occur or recur, in the area of the authority, the authority must: (1) serve an abatement notice in respect of the nuisance in accordance with s 80(1), (2) (see PARA 201); or (2) take such other steps as it thinks appropriate for the purpose of persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence: s 80(2A) (s 80(2A)-(2E) added by the Clean Neighbourhoods and Environment Act 2005 s 86). 'Appropriate person' means, in relation to England, the Secretary of State; and, in relation to Wales, the National Assembly for Wales: Environmental Protection Act 1990 s 79(7) (definition added by the Clean Neighbourhoods and Environment Act 2005 s 101(1), (4)).

If a local authority has taken steps under the Environmental Protection Act 1990 s 80(2A)(b) (see head (2)) and either of the conditions in s 80(2C) (see heads (a), (b)) is satisfied, the authority must serve an abatement notice in respect of the nuisance: s 80(2B) (as so added). The conditions are: (a) that the authority is satisfied at any time before the end of the relevant period that the steps taken will not be successful in persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence; (b) that the authority is satisfied at the end of the relevant period that the nuisance continues to exist, or continues to be likely to occur or recur, in the area of the authority: s 80(2C) (as so added). The relevant period is the period of seven days starting with the day on which the authority was first satisfied that the nuisance existed, or was likely to occur or recur: s 80(2D) (as so added). The appropriate person is the person on whom the authority would otherwise be required under s 80(2A)(a) (see head (1)) to serve an abatement notice in respect of the nuisance: s 80(2E) (as so added).

As to the service of notices see also PARA 201. There is no longer a requirement that the nuisance should actually exist at the time of the service of the abatement notice. A local authority is entitled to have regard to three possible situations as at the date of service: (i) that there is an existing statutory nuisance; (ii) that a statutory nuisance is likely to occur; and (iii) that there is not, on that date, a statutory nuisance, but there has been such a nuisance in the past and it is likely to recur: *R v Knightsbridge Crown Court, ex p Cataldi* [1999] Env LR 62, [1999] EHLR 426, CA.

A local authority will have failed in its statutory duty under the Environmental Protection Act 1990 s 80(1) if, upon being advised of complaints, it resolves not to take any action but merely to monitor the situation: *R v Carrick District Council, ex p Shelley* [1996] Env LR 273, 95 LGR 620 (pollution of beaches). See also *Newcastle Upon Tyne Council v The Barns (NE) Ltd* [2005] EWCA Civ 1274, [2005] 44 LS Gaz R 31, sub nom *Newcastle City Council v The Barns (NE) Ltd* [2005] All ER (D) 101 (Oct), in which *R v Carrick District Council, ex p Shelley* was applied and it was held that the issue of an abatement notice was a necessary step in dealing with a statutory nuisance.

5 Environmental Protection Act 1990 s 80(1)(a).

6 Environmental Protection Act 1990 s 80(1)(b).

7 *Miller-Mead v Minister of Housing and Local Government* [1963] 2 QB 196, [1963] 1 All ER 459, CA; *Myatt v Teignbridge District Council* [1994] Env LR 78, DC (appellant, who kept 17 dogs in a small property, unsuccessfully challenged a notice which merely stated that the nuisance consisted of the keeping of dogs); *Budd v Colchester Borough Council* [1999] LGR 601, 143 Sol Jo LB 96, CA (notice served in respect of barking dogs which did not set out the levels of barking which constituted the nuisance or the precise times at which the barking had taken place upheld). See also *R v Falmouth and Truro Port Health Authority, ex p South West Water Ltd* [2001] QB 445, [2000] 3 All ER 306, CA (notice relating to sewage discharge that failed to identify precisely where the statutory nuisance arose not thereby invalidated); *Griffiths v Pembrokeshire County Council* [2000] NLJR 512, (31 March 2000) Lexis (notice relating to animal carcase incinerator).

8 As to the meaning of 'prejudicial to health' see PARA 158.

9 *Lowe v South Somerset District Council* [1998] JPL 458, (1997) 96 LGR 487, DC.

10 A local authority may leave the choice of means of abatement to the perpetrator of the nuisance, but if the means of abatement are required by the local authority then they must be specified: *R v Falmouth and*

Truro Port Health Authority, ex p South West Water Services [2001] QB 445, [2000] 3 All ER 306, CA (notice not invalid for failing to specify the works required to abate the nuisance, although held invalid on other grounds), overruling *Kirklees Metropolitan Borough Council v Field* (1997) 30 HLR 869, 96 LGR 151 (notice served about a wall in imminent danger of collapse invalid because it did not specify the steps that were to be taken to abate the nuisance). See also *R v Llewellyn* (1884) 13 QBD 681, DC (notice specifying precise works to be carried out in relation to a privy upheld); *R v Wheatley, ex p Cowburn* (1885) 16 QBD 34 (notice requiring abatement of a nuisance arising from untrapped drains and the execution of any necessary works held invalid for not specifying the works); *R v Kent Justices* (1885) 1 TLR 539, sub nom *R v Kent Inhabitants* (1885) 55 LJMC 9n, DC; *Strathclyde Regional Council v Tudhope* 1983 SLT 22n, [1983] JPL 536; *Network Housing Association v Westminster City Council* (1994) 27 HLR 189, 93 LGR 280, DC (abatement notice requiring landlord housing association to reduce the noise to a specified level of decibels, without indicating how this was to be achieved, held invalid because it did not set out the steps to be followed); *Sterling Homes (Midlands) Ltd v Birmingham City Council* [1996] Env LR 121, DC (notice served on owner of premises requiring work to be carried out to ensure that noise and vibration in the premises caused by an industrial press on adjacent premises held void for not specifying the work to be carried out); *SFI Group plc (formerly Surrey Free Inns plc) v Gosport Borough Council* [1999] LGR 610, [2000] EHLR 137, CA (upholding a notice served on the owner of a pub at which music was played requiring him to abate the noise and prohibiting the recurrence of the same and, to that end, requiring the cessation of the playing of amplified music at levels causing a nuisance at neighbouring premises); *R v Falmouth and Truro Port Health Authority, ex p South West Water Ltd* (where it was held that it was not enough for the local authority to ask for pumps discharging sewage to be switched off without specifying some alternative means of dealing with the sewage); *Stanley v Ealing London Borough Council* (1999) 32 HLR 745, [2000] Env LR D18, DC (the question of how to store refuse was not a difficult or complicated one and it was reasonable for the local authority to leave the practical details to the owner of the property); *Sevenoaks District Council v Brands Hatch Leisure Group Ltd* [2001] Env LR 5 (an abatement notice was not valid for failing to specify 'works' and 'steps' to be taken since the council had not chosen to include in the notice a requirement for works to be done or steps to be taken); *Cambridge City Council v Douglas* [2001] Env LR 41 (notice requiring the cessation of noise nuisance did not specify noise levels or necessary works); *Godfrey v Conwy County Borough Council* [2001] Env LR 38 (unspecified requirement in an abatement notice that perpetrators merely cease or abate the nuisance was a valid requirement). It is arguable whether a notice can direct the recipient how to carry out day-to-day operations: *Wivenhoe Port Ltd v Colchester Borough Council* [1985] JPL 175. If a notice could have simply required the abatement of the nuisance but the authority chooses to include a requirement of works, then the works must be sufficiently specified: *SFI Group plc (formerly Surrey Free Inns plc) v Gosport Borough Council*.

11 A notice which does specify the works that are to be carried out but which is ambiguous may be invalid: *Whatling v Rees* (1914) 84 LJKB 1122 (where the notice, which required the abatement of a nuisance which arose from water rising and accumulating in a cellar, was held invalid because it was not clear whether the obligation to drain was an obligation on one occasion only or a continuing obligation); *R v Mid Sussex Justices, ex p Mid Sussex District Council* [1996] EGCS 34. If the notice provides alternative methods, one of which is sufficiently specific but the other of which is not sufficiently specific, the notice will be void: *Perry v Garner* [1953] 1 QB 335, [1953] 1 All ER 285, DC (where the notice, to destroy an infestation of rats, specified poison treatment of the land or other work of a not less effectual character); cf *Stevenage Borough Council v Wilson* [1993] Env LR 214 (where the court upheld a notice which had a valid 'desist' part and a questionable 'do' part). A notice will not necessarily be bad for prescribing only one method of abatement without adding 'an order to abate nuisance in any way': *Whitaker v Derby Urban Sanitary Authority* (1885) 55 LJMC 8, 2 TLR 68. It would seem that a notice that is in part bad can be severed: *R v Horrocks, etc, Justices, ex p Boustead* (1900) 69 LJQB 688, 16 TLR 435, DC; *R v Fenny Stratford Justices, ex p Watney Mann (Midlands) Ltd* [1976] 2 All ER 888, [1976] 1 WLR 1101; and see *Surrey Free Inns plc v Gosport Borough Council* (1998) 96 LGR 369, [1998] Crim LR 578, DC (affd sub nom *SFI Group plc (formerly Surrey Free Inns) v Gosport Borough Council* [1999] LGR 610, [2000] EHLR 137, CA). A notice that identifies particular matters to which special attention must be paid, and that refers to the consequences of failure to carry out works without specifying those works, is defective: *Camden London Borough Council v London Underground Ltd* [2000] Env LR 369, [1999] All ER (D) 1439, DC.

12 *Whatling v Rees* (1914) 84 LJKB 1122 (where the notice required the abatement of a nuisance which arose from water rising and accumulating in a cellar, and specified that the water was to be drained off, the cellar was to be filled up and that all other necessary work was to be carried out; the notice was held invalid inter alia because the water had to be pumped out, it not being possible merely to drain off water from the cellar).

13 *Millard v Wastall* [1898] 1 QB 342, DC (notice requiring recipient to abstain from any act that caused a chimney to emit black smoke in such a quantity as to be a nuisance held valid); *R v Horrocks, etc, Justices, ex p Boustead* (1900) 69 LJQB 688, 16 TLR 435 (notice requiring the abatement of a nuisance, viz non-recurrence of an accumulation of slaughter-house offal on land, but not specifying how this was to be achieved, held valid); *Central London Rly Co v Hammersmith London Borough Council* (1904) 73 LJKB 623, DC (notice requiring abatement of smoke from a factory chimney by doing such things as might be necessary to prevent a recurrence, held valid); *Tough v Hopkins* [1904] 1 KB 804 (notice upheld requiring owner of a steam-tug to abate a nuisance arising from smoke arising from funnel of the steam-tug without specifying how); *McGillivray v Stephenson* [1950] 1 All ER 942, 48 LGR 409, DC (notice not specifying an alternative way of keeping pigs

without creating a nuisance but requiring recipient to stop keeping pigs, held valid); *R v Fenny Stratford Justices, ex p Watney Mann (Midlands) Ltd* [1976] 2 All ER 888, [1976] 1 WLR 1101, DC (notice requiring that loud noise from a juke box be abated without specifying method held valid); *Stevenage Borough Council v Wilson* [1993] Env LR 214 (notice preventing recurrence of nuisance occasioned by playing of recorded music at high volume and noisy behaviour of persons, held valid even though it did not specify how this was to be achieved); *East Northamptonshire District Council v Fossett* [1994] Env LR 388, DC (where the court upheld a notice which prohibited the occurrence of a nuisance arising from the playing of music and other activities at a rave event and required the recipient to control all activities including the playing of music so as not to cause noise nuisance at residential properties; the notice did not have to specify how it was to be achieved or prescribe a decibel level); *Myatt v Teignbridge District Council* [1994] Env LR 78 (notice requiring abatement of noise created by dogs did not have to specify how it was to be achieved); *Budd v Colchester Borough Council* [1999] LGR 601, CA (notice served in respect of barking dogs that simply set out the nuisance, leaving it up to the owner of the dogs whether to get rid of the dogs, insulate the premises or treat the dogs differently, held valid); *Surrey Free Inns plc v Gosport Borough Council* (1998) 96 LGR 369, [1998] Crim LR 578, DC (affd sub nom *SFI Group plc (formerly Surrey Free Inns) v Gosport Borough Council* [1999] LGR 610, [2000] EHLR 137, CA) (notice requiring publican to abate loud amplified music but which did not specify works held valid). A notice that both requires work to be carried out and prohibits a recurrence must state either expressly or by implication that a recurrence is prohibited: see *Stanley v Ealing London Borough Council* (1999) 32 HLR 745, [2000] Env LR D18, DC.

14 Environmental Protection Act 1990 s 80(1). See *R v Tunbridge Wells Justices, ex p Tunbridge Wells Borough Council* [1996] Env LR 880 (failure to insert a time limit did not render a notice invalid); *Brighton and Hove City Council v Ocean Coachworks (Brighton) Ltd* [2001] Env LR 4 (requirement to cease activities 'forthwith' was superfluous and therefore notice was not invalid).

15 *Bristol Corpn v Sinnott* [1918] 1 Ch 62, CA. Cf *Strathclyde Regional Council v Tudhope* 1983 SLT 22n, [1983] JPL 536 (notice under similar legislation requiring road breaking equipment not to be used until fitted with effective dampeners).

16 *R v Birmingham City Justices, ex p Guppy* (1988) 152 JP 159, DC; *R v Tunbridge Wells Justices, ex p Tunbridge Wells Borough Council* [1996] Env LR 88, 160 JP 574, DC.

17 Ie under the Environmental Protection Act 1990 s 80(3): see PARA 202.

18 Environmental Protection Act 1990 s 81(7), Sch 3 para 6. In construing a notice it is permissible and appropriate to refer to any letter that accompanied the notice: *Camden London Borough Council v London Underground Ltd* [2000] Env LR 369, [1999] All ER (D) 1439, DC.

19 Environmental Protection Act 1990 s 81(2). However, any appeal in such a case must be heard by a magistrates' court having jurisdiction where the act or default is alleged to have taken place: s 81(2).

One local authority may institute proceedings against another local authority: see *R v Epping (Waltham Abbey) Justices, ex p Burlinson* [1948] 1 KB 79, [1947] 2 All ER 537, DC.

UPDATE

200 General requirements for an abatement notice

NOTE 1--'Institute summary proceedings' in the 1990 Act s 79(10) does not include service of an abatement notice: *R (on the application of Ethos Recycling Ltd) v Barking and Dagenham Magistrates' Court* [2009] EWHC 2885 (Admin), (2010) 174 JP 25, DC.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/2. LEGAL PROCEEDINGS AND DEFENCES/(5) PROCEEDINGS FOR STATUTORY NUISANCES/(ii) Proceedings by a Local Authority/201. Service of abatement notices.

201. Service of abatement notices.

The person on whom an abatement notice[1] must be served varies according to the type of statutory nuisance[2].

Where the nuisance arises from any defect of a structural character, the abatement notice must be served on the owner of the premises[3].

Where the person responsible[4] for the nuisance cannot be found or the nuisance has not yet occurred, the abatement notice must be served on the owner or occupier of the premises[5].

In the case of a statutory nuisance falling within the category of noise that is prejudicial to health[6] or a nuisance and is emitted from or caused by a vehicle, machinery or equipment[7] in a street[8], which has not yet occurred[9] or which is noise emitted from or caused by an unattended vehicle or unattended machinery or equipment[10], the abatement notice must be served: (1) where the person responsible for the vehicle, machinery or equipment can be found, on that person[11]; (2) where that person cannot be found or the local authority[12] determines that this provision should apply, by fixing the notice to the vehicle, machinery or equipment[13].

In other cases, the abatement notice must be served on the person responsible for the nuisance[14].

Generally, where more than one person is responsible for a statutory nuisance, these provisions[15] apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance[16]. However, where the statutory nuisance is noise emitted from or caused by a vehicle, machinery or equipment in a street[17] and more than one person is responsible for the nuisance, service on any one of the persons responsible for the nuisance is sufficient[18]. Similarly where such a statutory nuisance is caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment for which more than one person is responsible, service on any one of the persons is sufficient[19].

1 As to the meaning of 'abatement notice' see PARA 200.

2 As to statutory nuisances see PARA 156. As to the meaning of 'nuisance' see PARA 159. As to service of notices generally see the Environmental Protection Act 1990 s 160; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 147. As to service of an abatement notice in the case of a statutory nuisance falling within the category of noise emitted from premises so as to be prejudicial to health or a nuisance (ie within s 79(1)(g): see PARA 156 head (9)) see PARA 200 note 4.

3 Environmental Protection Act 1990 s 80(2)(b). Section 80(2) is subject to s 80A(1) (see the text to notes 6-10): see s 80(2) (amended by the Noise and Statutory Nuisance Act 1993 s 3(2), (3)).

As to the nature of the obligation to serve a notice see *Nottingham Friendship Housing Association Ltd v Newton* [1974] 2 All ER 760 at 763-764, [1974] 1 WLR 923 at 927 per Lord Widgery CJ. As to the meaning of 'premises' see PARA 160. As to who is thereby rendered responsible see *Truman, Hanbury Buxton & Co v Kerslake* [1894] 2 QB 774; *Cook v Montagu* (1872) LR 7 QB 418; *Broadbent v Shepherd* [1901] 2 KB 274; *Bottomley v Harrison* [1952] 1 All ER 368, 50 LGR 172, DC (person acting as secretary for the owner while the owner was abroad was not responsible); *Watts v Battersea Corpn* [1929] 2 KB 63, CA; *Midland Bank Ltd v Conway* [1965] 2 All ER 972, [1965] 1 WLR 1165 (owner resident abroad, rent paid in direct through bank); *Camden London Borough Council v Gunby* [1999] 4 All ER 602, [2000] 1 WLR 465, DC (managing agent).

As to the meaning of 'structural defect' see *Barnett v Laskey* (1898) 68 LJQB 55, 63 JP 5, DC (germs in brickwork not a structural defect); *Kinson Pottery Co Ltd v Poole Corpn* [1899] 2 QB 41, DC (lack of cesspool); *Warman v Tibbatts* (1922) 128 LT 477, DC (hole in an oven not a structural defect).

4 'Person responsible', in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable; in relation to a vehicle, includes the person in whose name the vehicle is for the time being registered under the Vehicle Excise and Registration Act 1994 (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 717 et seq; **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 518 et seq) and any other person who is for the time being the driver of the vehicle; in relation to machinery or equipment, includes any person who is for the time being the operator of the machinery or equipment: Environmental Protection Act 1990 s 79(7) (definition substituted by the Noise and Statutory Nuisance Act 1993 s 2(4); and amended by the Vehicle Excise and Registration Act 1994 s 63, Sch 3 para 27). As to the person to whose act, default or sufferance the nuisance is attributable see *Carr v Hackney London Borough Council* (1995) 93 LGR 606, 160 JP 402, DC; *Network Housing Association v Westminster City Council* (1994) 27 HLR 189, 93 LGR 280, DC (abatement notice served on defendant housing association, rather than the tenant, upheld on the basis that the cause of the noise nuisance was the lack of sound proofing, rather than everyday noise caused by the tenant); *Haringey London Borough Council v Jowett* [1999] EHLR 410, [1997] LGR 667 (owing to changes in the surroundings, previously adequate noise insulation no longer adequate; held, following *Southwark London*

Borough Council v Ince [1989] COD 549, 21 HLR 504, DC, that the landlord of the premises was liable because the obligation imposed is a continuous one, although *Southwark London Borough Council v Ince* has since been doubted in *R (on the application of Vella) v Lambeth London Borough Council* [2005] EWHC 2473 (Admin), (2005) Times, 23 November, [2005] All ER (D) 171 (Nov)); cf *Dover District Council v Farrar* (1980) 2 HLR 32 (where local authority was held not responsible for dampness in premises with adequate electric heating that the tenants could not afford to run properly). The act or default of an employee may be imputed to his employer: *Barnes v Akroyd* (1872) LR 7 QB 474. There is no consistent line in the authorities as to the ascription of responsibility: see eg *Barnett v Laskey* (1898) 68 LJQB 55, 63 JP 5, DC (local authority itself was held to be in default rather than the owner where, having undertaken to cleanse privies, it failed to eradicate germs after an occurrence of typhoid fever); *R v Mead, ex p Gates* (1895) 64 LJMC 169, 59 JP 150, DC (superintendent of a building who gave orders to a caretaker was held to be the person by whose act, default or sufferance a nuisance was caused in it, although he did not see that the caretaker carried out the orders and although he himself acted under the directions of a committee); *R v Slade* (1896) 65 LJMC 108, DC; *Draper v Sperring* (1861) 10 CBNS 113, 30 LJMC 225 (nuisance from sheep droppings was held to have been caused by the act, default, permission or sufferance of the owner of a market whose agent placed hurdles in a street to pen the sheep); *Brown v Bussell*, *Francomb v Freeman* (1868) LR 3 QB 251, 37 LJMC 65, DC (occupiers of a brewery discharging refuse into a drain which entered land of another who did not get rid of it and where it became a nuisance were the persons by whose act, default or permission the nuisance was caused); *Rhymney Iron Co v Gelligaer District Council* [1917] 1 KB 589, DC (notice served on the owner of rented premises having a clogged drain connecting to the sewer, where it could not be shown what caused the stoppage); *Warman v Tibbatts* (1922) 128 LT 477, DC (no act, default or sufferance by landlord); *Wincanton RDC v Parsons* [1905] 2 KB 34 (person sending sewage down a pipe caused or continued a nuisance by his act, default or sufferance); *River Thames Conservators v Port of London Port Sanitary Authority* [1894] 1 QB 647; *Southwark London Borough Council v Ince* (although this case has since been doubted in *R (on the application of Vella) v Lambeth London Borough Council*).

As a nuisance is often a continuing matter, the person responsible may include a person who permits its continuance. Since a landowner is bound to abate a public nuisance caused by foul matter deposited on his land (see *A-G v Tod Heatley* [1897] 1 Ch 560, CA), the nuisance arises or continues by his act, default or sufferance (*Clayton v Sale UDC* [1926] 1 KB 415, DC (breach in a flood bank, which the owner was under no contractual duty to repair or maintain, created a flooding nuisance that the owner was required to abate)). See also *Margate Pier and Harbour Proprietors v Margate Town Council* (1869) 20 LT 564 (deposit of seaweed). An occupier continues a nuisance if, with knowledge or presumed knowledge of its existence, he fails to take reasonable means to bring it to an end: *Sedleigh-Denfield v O'Callaghan* [1940] AC 880 at 913, [1940] 3 All ER 349 at 371, HL, per Lord Romer. Thus the act of a trespasser giving rise to a nuisance may render the occupier liable: *Sedleigh-Denfield v O'Callaghan* at 913 and 371 per Lord Romer.

Whether a landlord who is the person responsible can recover from a tenant will depend upon the terms of the lease: *Foulger v Arding* [1902] 1 KB 700, CA; *Howe v Botwood* [1913] 2 KB 387, DC; *Stockdale v Ascherberg* [1904] 1 KB 447, CA. Under the ordinary principles of the law relating to landlord and tenant, unless there is a statutory provision or a contractual provision to the contrary, it is the tenant who as occupier will be liable: see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 413 et seq. If the tenant has covenanted to do the repairs he is liable to the exclusion of all others, even if the nuisance existed when the tenancy commenced (*Gwinnell v Eamer* (1875) LR 10 CP 658); if there is no contractual obligation to repair, the landlord may be liable if he has reserved the right to enter to carry out necessary repairs (*Heap v Ind Coope and Allsopp Ltd* [1940] 2 KB 476, [1940] 3 All ER 634, CA; *Mint v Good* [1951] 1 KB 517, [1950] 2 All ER 1159, CA); where there is no contractual obligation to repair, the landlord is liable if the nuisance existed at the time of letting (*Todd v Flight* (1860) 9 CBNS 377); and the landlord is liable where he lets premises for a specific purpose which gives rise to a nuisance (*Harris v James* (1876) 45 LJQB 545). As to whether the cost of executing work before service of an abatement notice constitutes an 'outgoing' see *Re Bettingham, Melhado v Woodcock* (1892) 9 TLR 48; *Smith v Robinson* [1893] 2 QB 53. Expenditure by a tenant in abating a nuisance, pursuant to an order served on the tenant only, cannot be set off against rent due to his landlord: *Butcher v Ruth* (1887) 22 LR Ir 380.

5 Environmental Protection Act 1990 s 80(2)(c). See also note 3. The person responsible 'cannot be found' if he cannot be identified without considerable investigation: *Rhymney Iron Co v Gelligaer District Council* [1917] 1 KB 589, DC (rented premises having a clogged drain connecting to the sewer; cause of stoppage could not be shown; notice served on the owner). Evidence must be given that proper inquiries have been made to find the person responsible: *R v Mead* [1898] 1 QB 110, DC. Service through the letter box of the occupier of the subject premises is sufficient: *Lambeth London Borough Council v Mullings* [1990] Crim LR 426, (1990) Times, 16 January (decided under similar provisions in the Control of Pollution Act 1974).

6 As to the meaning of 'prejudicial to health' see PARA 158.

7 As to the meaning of 'equipment' see PARA 156 note 20.

8 Ie a statutory nuisance falling within the Environmental Protection Act 1990 s 79(1)(ga): see PARA 156 head (10). As to the meaning of 'street' see PARA 156 note 21. As to service of an abatement notice in the case of a statutory nuisance falling within the category of noise emitted from premises so as to be prejudicial to health or a nuisance (ie within s 79(1)(g): see PARA 156 head (9)) see PARA 200 note 4.

9 Environmental Protection Act 1990 s 80A(1)(a) (s 80A added by the Noise and Statutory Nuisance Act 1993 s 3(6)).

10 Environmental Protection Act 1990 s 80A(1)(b) (as added: see note 9).

11 Environmental Protection Act 1990 s 80A(2)(a) (as added: see note 9).

12 As to the meaning of 'local authority' see PARA 155 note 5.

13 Environmental Protection Act 1990 s 80A(2)(b) (as added: see note 9). A person who removes or interferes with a notice fixed to a vehicle, machinery or equipment in accordance with s 80A(2)(b) is guilty of an offence, unless he is the person responsible for the vehicle, machinery or equipment or he does so with the authority of that person: s 80A(7) (as so added). A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 80A(8) (as so added). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Where an abatement notice is served in accordance with s 80A(2)(b) by virtue of a determination of the local authority, and the person responsible for the vehicle, machinery or equipment can be found and served with a copy of the notice within one hour of the notice being fixed to the vehicle, machinery or equipment, a copy of the notice must be served on that person accordingly: s 80A(3) (as so added). Where an abatement notice is served in accordance with s 80A(2)(b) by virtue of a determination of the local authority, the notice must state that, if a copy of the notice is subsequently served under s 80A(3), the time specified in the notice as the time within which its requirements are to be complied with is extended by such further period as is specified in the notice: s 80A(4) (as so added).

14 Environmental Protection Act 1990 s 80(2)(a). See also note 3.

Where a notice is served on a person who, though responsible for the statutory nuisance, has no authority to enter the land so as to abate the nuisance, the notice is bad: *R v Cumberland Justices, ex p Trimble* (1877) 41 JP 454, 36 LT 508; *Scarborough Corpn v Scarborough Sanitary Authority* (1876) 1 Ex D 344; cf *Parker v Inge* (1886) 17 QBD 584, DC; *Lancaster v Barnes District Council* [1898] 1 QB 855, DC.

In relation to a company, service on a company secretary of a related company at its registered address does not suffice even though the registered address of the related company and the company to be served are the same: *AMEC Building Ltd v Camden London Borough Council* [1997] Env LR 330, (1996) 55 Con LR 82, DC. However, service on the individual directors 'trading as' a company, although a misnomer, is sufficient: *Malkins Bank Estates Ltd v Kirkham* (1966) 64 LGR 361, DC.

15 Ie the Environmental Protection Act 1990 s 80.

16 Environmental Protection Act 1990 s 81(1) (amended by the Noise and Statutory Nuisance Act 1993 s 4). Contrast *Nathan v Rouse* [1905] 1 KB 527, DC; *Thompson v Eccles Corpn, Haedicke v Friern Barnet UDC* [1905] 1 KB 110, CA.

17 Ie a statutory nuisance falling within the Environmental Protection Act 1990 s 79(1)(ga): see PARA 156 head (10).

18 See the Environmental Protection Act 1990 s 81(1A) (added by the Noise and Statutory Nuisance Act 1993 s 4).

19 See the Environmental Protection Act 1990 s 81(1B) (added by the Noise and Statutory Nuisance Act 1993 s 4).

202. Appeals against abatement notices.

A person served with an abatement notice[1] may appeal against the notice to a magistrates' court within the period of 21 days beginning with the date on which he was served with the notice[2]. The grounds of appeal may include any one or more of the following that are appropriate in the circumstances of the particular case[3]:

64 (1) that the abatement notice is not justified by the provisions relating to summary proceedings for statutory nuisances[4];

65 (2) that there has been some informality, defect or error in, or in connection with, the abatement notice or in, or in connection with, any copy[5] of the notice[6];

66 (3) that the authority has refused unreasonably to accept compliance with alternative requirements, or that the requirements of the abatement notice are otherwise unreasonable in character or extent, or are unnecessary[7];

67 (4) that the time, or, where more than one time is specified, any of the times, within which the requirements of the abatement notice are to be complied with is not reasonably sufficient for the purpose[8];

68 (5) in the case of certain statutory nuisances[9], that the best practicable means[10] were used to prevent, or to counteract the effect of, the nuisance[11];

69 (6) that, in the case of certain statutory nuisances relating to noise[12], the requirements imposed by the abatement notice[13] are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of certain other notices[14], consents[15] or determinations[16];

70 (7) that, in the case of certain statutory nuisances relating to noise[17], the requirements imposed by the abatement notice[18] are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of any condition of a consent given[19] in respect of loudspeakers[20];

71 (8) that the abatement notice should have been served on some person instead of the appellant, being: (a) the person responsible for the nuisance; (b) the person responsible for the vehicle, machinery or equipment; (c) in the case of a nuisance arising from any defect of a structural character, the owner of the premises[21]; or (d) where the person responsible cannot be found or the nuisance has not yet occurred, the owner or occupier of the premises[22];

72 (9) that the abatement notice might lawfully have been served on some person instead of the appellant, being: (a) in the case where the appellant is the owner of the premises, the occupier of the premises; or (b) in the case where the appellant is the occupier of the premises, the owner of the premises, and that it would have been equitable for it to have been so served[23];

73 (10) that it might lawfully have been served on some person in addition to the appellant, being: (a) a person also responsible for the nuisance; (b) person who is also owner of the premises; (c) a person who is also an occupier of the premises; or (d) a person who is also the person responsible for the vehicle, machinery or equipment, and that it would have been equitable for it to have been so served[24].

The appellant may serve a copy of his notice of appeal on any other person having an estate or interest in the premises, vehicle, machinery or equipment; and, where the grounds on which an appeal is brought include a ground specified in head (8) or head (9) above, the appellant must serve a copy of his notice of appeal on any other person referred to[25].

In certain circumstances[26] the abatement notice may be suspended until the appeal has been abandoned or decided by the court[27].

On the hearing of the appeal, the task of the court is to see whether the underlying facts which constitute the nuisance or its likely occurrence or recurrence existed at the date of the abatement notice[28]. The court may quash the abatement notice to which the appeal relates[29], or vary the notice in favour of the appellant in such manner as it thinks fit[30], or dismiss the appeal[31]. A notice which is varied under this provision is final and otherwise has effect, as so varied, as if it had been so made by the local authority[32]. The court may make such order as it thinks fit with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work[33], or as to the proportions in which any expenses which may become recoverable by the authority[34] are to be borne by the appellant

and by any other person[35]. The court is obliged to have regard to all relevant circumstances and to make an order that is proportionate and no more than is reasonably necessary to meet the statutory requirement[36].

1 As to service of an abatement notice see PARA 201. As to the meaning of 'abatement notice' see PARA 200.

2 Environmental Protection Act 1990 s 80(3) (amended by the Noise and Statutory Nuisance Act 1993 s 3). Where an abatement notice is served in accordance with the Environmental Protection Act 1990 s 80A(2)(b) (see PARA 201), the person responsible for the vehicle, machinery or equipment may appeal against the notice under s 80(3) as if he had been served with the notice on the date on which it was fixed to the vehicle, machinery or equipment: s 80A(5) (added by the Noise and Statutory Nuisance Act 1993 s 3(6)). As to the meaning of 'person responsible' see PARA 201 note 4. As to the meaning of 'equipment' see PARA 156 note 20.

An appeal against an abatement notice to a magistrates' court is by way of complaint for an order, and the Magistrates' Courts Act 1980 (see **MAGISTRATES**) applies to the proceedings: Environmental Protection Act 1990 s 81(7), Sch 3 para 1(1), (2). An appeal against any decision of a magistrates' court in pursuance of such an appeal lies to the Crown Court at the instance of any party to the proceedings in which the decision was given: Sch 3 para 1(3).

The Secretary of State has power to make regulations as to appeals: see Sch 3 para 1(4). As to the regulations made see the Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644 (amended by SI 2006/771; SI 2007/117). As to the Secretary of State see PARA 129 note 7.

If the recipient of an abatement notice does not appeal against it and is subsequently prosecuted under the Environmental Protection Act 1990 s 80(4) (see PARA 203) for contravention of the notice, he may not in those proceedings challenge the correctness and justification of the notice: *A Lambert Flat Management Ltd v Lomas* [1981] 2 All ER 280, [1981] 1 WLR 898, DC. Notwithstanding the existence of a statutory right of appeal, it may be appropriate to challenge the issue of an abatement notice by way of an application for judicial review where there are issues of legitimate expectation or the meaning of particular words in a statute is in dispute, making it more convenient and suitable to be dealt with in the High Court than before magistrates: *R v Falmouth and Truro Port Health Authority, ex p South West Water Services* [2001] QB 445, [2000] 3 All ER 306, CA.

3 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(1), (2).

4 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(2)(a). The provisions referred to in the text are those of the Environmental Protection Act 1990 s 80: see PARAS 200-201.

5 Ie a copy served under the Environmental Protection Act 1990 s 80A(3): see PARA 201.

6 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(2)(b). If and so far as an appeal is based on this ground the court must dismiss the appeal if it is satisfied that the informality, defect or error was not a material one: reg 2(3). See also *Sovereign Rubber Ltd v Stockport Metropolitan Borough Council* [2000] Env LR 194, [2000] EHLR 154. As to the power of the court to vary a notice when making a final order on an appeal see the Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(5); and *Waveney District Council v Lowestoft (North East Suffolk) Magistrates Court* [2008] EWHC 3295 (Admin), [2009] All ER (D) 74 (Feb).

7 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(2)(c).

8 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(2)(d).

9 Ie where the nuisance to which the notice relates: (1) is a nuisance falling within the Environmental Protection Act 1990 s 79(1)(a), (d), (e), (f), (fa) or (g) (see PARA 156 heads (1), (4)-(7), (9)) and arises on industrial, trade or business premises; (2) is a nuisance falling within s 79(1)(b) (see PARA 156 head (2)) and the smoke is emitted from a chimney; (3) is a nuisance falling within s 79(1)(ga) (see PARA 156 head (10)) and is noise emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes; or (4) is a nuisance falling within s 79(1)(fb) (see PARA 156 head (8)) and (a) the artificial light is emitted from industrial, trade or business premises; or (b) the artificial light (not being light to which head (a) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility (within the meaning given by s 80(8A) (see PARA 204 note 2)): Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(2)(e)(i)-(iv) (reg 2(2)(e)(i) amended, and reg 2(2)(e)(iv) added, by SI 2006/77 (England) and SI 2007/117 (Wales)). As to the meaning of 'industrial, trade or business premises' see PARA 156 note 12.

10 As to the meaning of 'best practicable means' see PARA 161. See also *Manley and Manley v New Forest District Council* [2000] EHLR 113, [1999] 4 PLR 36 (subsequent judicial review proceedings reported at [2007] EWHC 3188 (Admin), [2008] Env LR 26).

11 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(2)(e). On an appeal, the material date to be considered in determining whether the best practicable means have been employed is the date of the service of the notice, not the date of the hearing: *SFI Group plc (formerly Surrey Free Inns plc) v Gosport Borough Council* [1999] LGR 610, [2000] EHLR 137, CA (overruling *Johnsons News of London Ltd v Ealing London Borough Council* (1989) 154 JP 33, DC).

12 Ie a nuisance under the Environmental Protection Act 1990 s 79(1)(g) or s 79(1)(ga) (see PARA 156 heads (9), (10)).

13 Ie by virtue of the Environmental Protection Act 1990 s 80(1)(a): see PARA 201.

14 Ie any notice served under the Control of Pollution Act 1974 s 60 or s 66 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARAS 831, 834-835): Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(2)(f)(i).

15 Ie any consent given under the Control of Pollution Act 1974 s 61 or s 65 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARAS 828, 838): Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(2)(f)(ii).

16 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(2)(f). The determinations referred to in the text are any determinations made under the Control of Pollution Act 1974 s 67 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 827): Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(2)(f)(iii).

17 Ie a nuisance under the Environmental Protection Act 1990 s 79(1)(ga): see PARA 156 head (10).

18 See note 13.

19 Ie under the Noise and Statutory Nuisance Act 1993 s 8, Sch 2 para 1: see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 842.

20 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(2)(g).

21 As to the meaning of 'premises' see PARA 160.

22 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(2)(h).

23 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(2)(i).

24 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(2)(j).

25 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(4).

26 Ie where: (1) an appeal is brought against an abatement notice served under the Environmental Protection Act 1990 s 80 or s 80A; and (2) either (a) compliance with the abatement notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal; or (b) in the case of a nuisance under s 79(1)(g) or s 79(1)(ga) (see PARA 156 heads (9), (10)), the noise to which the abatement notice relates is noise necessarily caused in the course of the performance of some duty imposed by law on the appellant; and (3) either the Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 3(2) does not apply, or it does apply but the requirements of reg 3(3) have not been met: reg 3(1).

Regulation 3(2) applies where: (i) the nuisance to which the abatement notice relates is injurious to health or is likely to be of a limited duration such that suspension of the notice would render it of no practical effect; or (ii) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance: reg 3(2). Where reg 3(2) applies, the abatement notice must include: (A) a statement that reg 3(2) applies, and that as a consequence it has effect notwithstanding any appeal to a magistrates' court which has not been decided by the court; and (B) a statement as to which of the grounds set out in reg 3(2) apply: reg 3(3).

27 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 3(1).

28 *SFI Group plc (formerly Surrey Free Inns plc) v Gosport Borough Council* [1999] LGR 610, [2000] EHLR 137, CA. The material date to be considered in determining the appeal is the date of the service of the notice, not the date of the hearing: *SFI Group plc (formerly Surrey Free Inns plc) v Gosport Borough Council* (overruling *Johnsons News of London Ltd v Ealing London Borough Council* (1989) 154 JP 33, DC).

29 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(5)(a). For a case in which a decision allowing an appeal against a notice was itself quashed for procedural irregularity see *R (on the application of*

Broxbourne Borough Council) v North and East Hertfordshire Magistrates Court [2009] EWHC 695 (Admin), [2009] NPC 60, [2009] All ER (D) 96 (Apr).

30 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(5)(b). The justices are not confined to accepting one or the other party's suggestions: *Sovereign Rubber Ltd v Stockport Metropolitan Borough Council* [2000] Env LR 194, [2000] EHLR 154. See also *Lambie v Thanet District Council* [2000] EHLR 44 (abatement notice can only be varied if its service is valid in principle).

31 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(5)(c).

32 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(5). As to the meaning of 'local authority' see PARA 155 note 5.

33 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(6)(a). See also note 35. Where an individual is compelled by the service of an abatement notice to do work, but in fact the local authority is liable to carry out the works set out in the abatement notice, it would appear that there is a common law right to recover the expense incurred by the individual in complying with the notice: *Andrew v St Olave's Board of Works* [1898] 1 QB 775; *Gebhardt v Saunders* [1892] 2 QB 452; *Wilson's Music and General Printing Co v Finsbury London Borough Council* [1908] 1 KB 563; *North v Walthamstow UDC* (1898) 67 LJQB 972, 62 JP 836; cf *Proctor v Islington Corpn* (1902) 18 TLR 505, 1 LGR 652n (on appeal (1903) 67 JP 164, CA).

34 Ie under the Environmental Protection Act 1990 Pt III (ss 79-84). As to recovery of expenses see PARA 208.

35 Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644, reg 2(6)(b). In exercising its powers under reg 2(6), the court must have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required; and the court must be satisfied, before it imposes any requirement under reg 2(6) on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of reg 2(4) (see the text to note 25): reg 2(7).

Without a court order, where an owner does work on a common drain in pursuance of a notice, he cannot recover a proportion of the expenses of so doing from his neighbour even though a notice may have been served on him: *Reeve v Sadler* (1903) 88 LT 95, 1 LGR 441, DC; *Nathan v Rouse* [1905] 1 KB 527, DC.

36 *Roper v Tussauds Theme Parks Ltd* [2007] EWHC 624 (Admin), [2007] Env LR 31 at [15] per Wilkie J.

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203. Offence of failing to comply with an abatement notice.

If a person on whom an abatement notice[1] is served[2], without reasonable excuse[3], contravenes or fails to comply with any requirement or prohibition imposed by the notice, he is guilty of an offence[4]. A person who commits such an offence on industrial, trade or business premises[5] is liable on summary conviction to a fine[6]. In all other cases, a person who commits such an offence is liable on summary conviction to a fine[7] together with a further fine[8] for each day on which the offence continues after the conviction[9]. Upon conviction, a compensation order may be made[10].

Proceedings in respect of certain statutory nuisances[11] may not be brought without the consent of the Secretary of State[12] if proceedings in respect thereof might be instituted under certain other provisions relating to pollution control[13].

1 As to the meaning of 'abatement notice' see PARA 200.

2 As to service of an abatement notice see PARA 201.

3 An excuse is not reasonable if it involves matter which could have been raised on appeal under the Environmental Protection Act s 80(3) (see PARA 202), unless the matter arose after the appeal was heard or, if there was no appeal, after the time for appealing had expired: *A Lambert Flat Management Ltd v Lomas* [1981]

2 All ER 280 at 284, [1981] 1 WLR 898 at 904, DC, per Skinner J; *Ager v Gates* [1934] All ER Rep 566, 32 LGR 167. On the other hand, it may be a reasonable excuse or a defence to a prosecution that the notice does not contain a lawful requirement: see *Sterling Homes (Midlands) Ltd v Birmingham City Council* [1996] Env LR 121. It has been held that there can be no comprehensive definition of what constitutes a 'reasonable excuse'; it is not limited to the case of non-receipt of the notice and may, it seems, include the personal circumstances of the person receiving it: *Butuyuyu v Hammersmith and Fulham London Council* (1996) 29 HLR 584, [1997] Env LR 13, DC (recipient of notice had been diagnosed as HIV positive and her son suffered from cancer at the time of service and later died). It seems, however, that 'reasonable excuse' requires there to be an overwhelming or even difficult situation which the defendant was not able to control and which led to the breach: *Wellingborough Borough Council v Gordon* [1993] Env LR 218 at 221, 155 JP 494 at 498 per Taylor LJ (birthday celebration held not to be a reasonable excuse to offence caused by loud reggae music, air horns and whistles). It is not a reasonable excuse that, apart from the obligation imposed by the service of the abatement notice, the recipient was not responsible for the nuisance and had no responsibility in respect of it: *Clayton v Sale UDC* [1926] 1 KB 415 (breach in a flood bank, which the owner was under no contractual duty to repair or maintain, created a flooding nuisance that the owner was required to abate). It would seem that lack of finance is not a reasonable excuse: *Saddleworth UDC v Aggregate and Sand Ltd* (1970) 114 Sol Jo 931, 69 LGR 103, DC. The onus is on the defendant to provide some evidence of a reasonable excuse; it is then for the prosecution to prove, beyond all reasonable doubt, that it is not a reasonable one: *Polychronakis v Richards and Jerrom Ltd* [1998] Env LR 347, [1998] JPL 588, DC. As to defences see PARA 204.

4 Environmental Protection Act 1990 s 80(4). Section 80(4) applies in relation to a person on whom a copy of an abatement notice is served under s 80A(3) (see PARA 201 note 13) as if the copy were the notice itself: s 80A(6) (added by the Noise and Statutory Nuisance Act 1993 s 3(6)).

As to the method of initiating proceedings see the Magistrates' Courts Act 1980 s 50; *Northern Ireland Trailers Ltd v County Borough of Preston* [1972] 1 All ER 260, [1972] 1 WLR 203, DC; *R v Newham Justices, ex p Hunt* [1976] 1 All ER 839 at 842, [1976] 1 WLR 420 at 424, DC, per Kilner Brown J; and **MAGISTRATES** vol 29(2) (Reissue) PARA 681 et seq. The role of the court in proceedings under the Environmental Protection Act 1990 s 80(4) is limited to considering whether the notice has been complied with; its role is not to consider whether a nuisance has occurred: *AMEC Building Ltd v Camden London Borough Council* [1997] Env LR 330, (1996) 55 Con LR 82, DC. It is not mandatory for a local authority to take proceedings under the Environmental Protection Act 1990 s 80(4), even if the conditions for prosecution exist: *R v Lam and Brennan* [1997] 3 PLR 22, [1997] PIQR P488, CA.

5 As to the meaning of 'industrial, trade or business premises' see PARA 156 note 12.

6 Environmental Protection Act 1990 s 80(6). The penalty is a fine not exceeding £20,000: s 80(6).

7 Ie a fine not exceeding level 5 on the standard scale: Environmental Protection Act 1990 s 80(5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

8 Ie a fine of an amount equal to one-tenth of level 5 on the standard scale: Environmental Protection Act 1990 s 80(5). The daily fine that is imposed need not be one-tenth of the amount provided as level 5 on the standard scale; a daily fine of less than this amount may be imposed: *Canterbury City Council v Ferris* [1997] Env LR 14, [1997] JPL B 45, DC.

9 Environmental Protection Act 1990 s 80(5).

10 *Herbert v Lambeth London Borough Council* (1991) 24 HLR 299, 90 LGR 310, DC. Compensation can only be awarded in respect of injury, loss or damage caused by the continuation of the statutory nuisance from the date on which the period under the abatement notice expired to the date of the hearing: *R v Crown Court at Liverpool, ex p Cooke* [1996] 4 All ER 589, [1997] 1 WLR 700; *R v Crown Court at Knightsbridge, ex p Abdillahi* [1999] Env LR D1.

As to compensation orders see the Powers of Criminal Courts (Sentencing) Act 2000 s 130; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 375 et seq.

11 See PARA 200 note 1.

12 As to the Secretary of State see PARA 129 note 7.

13 See the Environmental Protection Act 1990 s 79(10); and PARA 200 note 1. As to pollution control see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 158 et seq.

204. Defences.

In any proceedings for an offence relating to contravention or failure to comply with an abatement notice[1] in respect of certain statutory nuisances[2], it is a defence to prove that the best practicable means[3] were used to prevent, or to counteract the effects of, the nuisance[4].

In any proceedings for an offence in respect of noise nuisances[5], where the offence consists in contravening certain requirements[6], it is a defence to prove: (1) that the alleged offence was covered by a notice served or a consent given under the Control of Pollution Act 1974[7]; or (2) where the alleged offence was committed at a time when the premises were subject to a noise reduction notice[8], that the level of noise emitted from the premises at that time was not such as to constitute a contravention of that notice[9]; or (3) where the alleged offence was committed at a time when the premises were not subject to a noise reduction notice, and when a fixed noise level[10] applied to the premises, that the level of noise emitted from the premises at that time did not exceed that level[11].

It is no defence for the defendant to allege that he has a right, as against other private persons, to do the things which ultimately result in the nuisance[12]. Equally, it is no defence to show that he has been relieved by statute of an obligation of repair owed to the tenant[13]. Inability to obey and execute the order without committing a trespass may be a good defence, and an order involving the commission of a trespass may be quashed[14]. The fact that the complaining local authority has contributed to the nuisance does not exonerate the individual who also contributes to the nuisance[15]. The existence of planning permission to carry out the works causing the nuisance does not confer immunity[16].

1 Ie an offence under the Environmental Protection Act 1990 s 80(4): see PARA 203. As to the meaning of 'abatement notice' see PARA 200.

2 The defence under Environmental Protection Act 1990 s 80(7) is not available:

6 (1) in the case of a nuisance falling within s 79(1)(a), (d), (e), (f), (fa) or (g) (see PARA 156 heads (1), (4)-(7), (9)) except where the nuisance arises on industrial, trade or business premises (s 80(8)(a) (amended by the Clean Neighbourhoods and Environment Act 2005 s 103(1), (2)(a)));

7 (2) in the case of a nuisance falling within the Environmental Protection Act 1990 s 79(1)(fb) (see PARA 156 head (8)) except where: (a) the artificial light is emitted from industrial, trade or business premises; or (b) the artificial light (not being light to which head (2)(a) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility (s 80(8)(aza) (added by the Clean Neighbourhoods and Environment Act 2005 s 103(1), (2)(b)));

8 (3) in the case of a nuisance falling within the Environmental Protection Act 1990 s 79(1)(ga) (see PARA 156 head (10)) except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business purposes (s 80(8)(aa) (added by the Noise and Statutory Nuisance Act 1993 s 3));

9 (4) in the case of a nuisance falling within the Environmental Protection Act 1990 s 79(1)(b) (see PARA 156 head (2)) except where the smoke is emitted from a chimney (s 80(8)(b)); and

10 (5) in the case of a nuisance falling within s 79(1)(c) (see PARA 156 head (3)) or s 79(1)(h) (see PARA 156 head (11)) (s 80(8)(c)).

As to statutory nuisances see PARA 156. As to the meaning of 'nuisance' see PARA 159. As to the meaning of 'industrial, trade or business premises' see PARA 156 note 12. As to the meaning of 'equipment' see PARA 156 note 20. As to the meaning of 'chimney' see PARA 166 note 7.

For the purposes of the Environmental Protection Act 1990 s 80(8)(aza) (see head (2)), a 'relevant sports facility' is an area, with or without structures, that is used when participating in a relevant sport, but does not

include such an area comprised in domestic premises; and 'relevant sport' means a sport that is designated for those purposes by order made by the Secretary of State in relation to England, or by the National Assembly for Wales in relation to Wales; a sport may be so designated by reference to its appearing in a list maintained by a body specified in the order: s 80(8A), (8B) (s 80(8A)-(8C) added by the Clean Neighbourhoods and Environment Act 2005 s 103(1), (3)). For the sports designated as 'relevant sports' for this purpose see the Statutory Nuisances (Artificial Lighting) (Designation of Relevant Sports) (England) Order 2006, SI 2006/781; and the Statutory Nuisances (Miscellaneous Provisions) (Wales) Order 2007, SI 2007/120. In the Environmental Protection Act 1990 s 80(8A), 'domestic premises' means: (i) premises used wholly or mainly as a private dwelling; or (ii) land or other premises belonging to, or enjoyed with, premises so used: s 80(8C) (as so added).

3 As to the meaning of 'best practicable means' see PARA 161.

4 Environmental Protection Act 1990 s 80(7). On an appeal, the material date to be considered in determining whether the best practicable means have been employed is the date of the service of the notice, not the date of the hearing: *SFI Group plc (formerly Surrey Free Inns plc) v Gosport Borough Council* [1999] LGR 610, [2000] EHLR 137, CA (overruling *Johnsons News of London Ltd v Ealing London Borough Council* (1989) 154 JP 33, DC).

5 Ie a statutory nuisance falling within the Environmental Protection Act 1990 s 79(1)(g) or s 79(1)(ga) (see PARA 156 heads (9), (10)).

6 Ie requirements imposed by virtue of the Environmental Protection Act 1990 s 80(1)(a): see PARA 200 head (1).

7 Environmental Protection Act 1990 s 80(9)(a) (s 80(9) amended by the Noise and Statutory Nuisance Act 1993 s 3(5)). The reference in the text is to a notice served under the Control of Pollution Act 1974 s 60 or a consent given under s 61 or s 65: see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARAS 828, 835, 838.

8 Ie a notice under the Control of Pollution Act 1974 s 66: see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 831.

9 Environmental Protection Act 1990 s 80(9)(b). This provision applies whether or not the relevant notice was subject to appeal at the time when the offence was alleged to have been committed: s 80(10).

10 Ie a level fixed under the Control of Pollution Act 1974 s 67: see **ENVIRONMENTAL AND PUBLIC HEALTH** vol 46 (2010) PARA 827.

11 Environmental Protection Act 1990 s 80(9)(c). This provision applies whether or not the relevant notice was subject to appeal at the time when the offence was alleged to have been committed: s 80(10).

12 *Brown v Bussell*, *Francomb v Freeman* (1868) LR 3 QB 251, 37 LJMC 65 (occupiers of a brewery discharging refuse into a drain which entered land of another who did not get rid of it and where it became a nuisance; occupiers of the brewery liable); *Riddell v Spear* (1879) 40 LT 130, DC (drain servicing other properties stopped up, causing a nuisance on the other properties).

13 *Turley v King* [1944] 2 All ER 489, DC (war damage). The availability of a defence of statutory authority depends on the language of the provision: *Camden London Borough Council v London Underground Ltd* [2000] Env LR 369, [1999] All ER (D) 1439, DC (where the provisional view of the court was that the Railways Act 1993, which gives a defence to any civil or criminal proceedings in negligence, did not apply to those statutory nuisances that had a requirement of injury to health but did apply to other types of statutory nuisance).

14 *Scarborough Corpn v Scarborough Rural Sanitary Authority* (1876) 1 Ex D 344, DC; *R v Trimble* (1877) 36 LT 508, 41 JP 454, DC.

15 *St Helens Chemical Co v St Helens Corpn* (1876) 1 Ex D 196, DC; *Kinson Pottery Co Ltd v Poole Corpn* [1899] 2 QB 41, DC; *Graham v Wroughton* [1901] 2 Ch 451, CA; *Kirkheaton Local Board v Beaumont* (1888) 52 JP Jo 68, DC; *Fordom v Parsons* [1894] 2 QB 780, DC.

16 *Hunter v Canary Wharf Ltd* [1997] AC 655, [1997] 2 All ER 426, HL; *Gillingham Borough Council v Medway (Chatham) Dock Co Ltd* [1993] QB 343, [1992] 3 All ER 923; *Wheeler v JJ Saunders Ltd* [1996] Ch 19, [1995] 2 All ER 697, CA.

205. Ancillary proceedings.

If a local authority[1] is of opinion[2] that proceedings for an offence of contravening or failing to comply with an abatement notice[3] would afford an inadequate remedy in the case of any statutory nuisance[4], it may take proceedings in the High Court for the purpose of securing the abatement, prohibition or restriction of the nuisance[5], typically seeking an injunction[6]. The proceedings may be maintained notwithstanding that the authority has suffered no damage from the nuisance[7]. However, the local authority must reach a positive decision that the defendants would be unlikely to respond to a prosecution for a breach of an existing or new abatement notice[8].

1 As to the meaning of 'local authority' see PARA 155 note 5.

2 It is not essential that the authority should have formed this opinion formally before the commencement of proceedings, provided it does so before any effective stage of the proceedings comes before the court: *Warwick RDC v Miller-Mead* [1962] Ch 441, [1962] 1 All ER 212, CA; *Poppett's (Caterers) Ltd v Maidenhead Borough Council* [1970] 3 All ER 289, [1971] 1 WLR 69, CA. See also *Bradford Metropolitan Council v Brown* (1986) 19 HLR 16, 84 LGR 731, CA.

3 Ie an offence under the Environmental Protection Act 1990 s 80(4): see PARA 203. As to the meaning of 'abatement notice' see PARA 200.

4 As to statutory nuisances see PARA 156. As to the meaning of 'nuisance' see PARA 159.

5 Environmental Protection Act 1990 s 81(5). A local authority cannot seek injunctive relief under this provision unless it has first served an abatement notice under s 80(1) (see PARA 201): *Newcastle Upon Tyne Council v The Barns (NE) Ltd* [2005] EWCA Civ 1274, [2005] 44 LS Gaz R 31, sub nom *Newcastle City Council v The Barns (NE) Ltd* [2005] All ER (D) 101 (Oct). Ancillary proceedings can only be taken in respect of a person in relation to whom summary proceedings could be taken under the Environmental Protection Act 1990 s 80 (see PARA 203) or s 82 (see PARAS 210-212): see *Bradford Metropolitan Council v Brown* (1986) 19 HLR 16, 84 LGR 731, CA (decided under earlier legislation). A local authority applying for an injunction in respect of a statutory nuisance may only do so under the Environmental Protection Act 1990 s 81(5), and not under the Local Government Act 1972 s 222 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 573): *Vale of White Horse District Council v Allen & Partners* [1997] Env LR 212, DC (distinguishing *Wyre Forest District Council v Bostock* (1992) 4 LMELR 50, (4 February 1992) Lexis, CA). Persons other than local authorities may be granted an injunction under the inherent jurisdiction of the court to prevent the occurrence or recurrence of a nuisance notwithstanding that the nuisance may be restrained under the provisions of the Environmental Protection Act 1990: *Lloyds Bank plc v Guardian Assurance plc and Trollope and Colls Ltd* (1986) 35 BLR 34, CA.

In any proceedings under the Environmental Protection Act 1990 s 81(5) in respect of a nuisance falling within s 79(1)(g) or s 79(1)(ga) (see PARA 156 heads (9), (10)), it is a defence to prove that the noise was authorised by a notice under the Control of Pollution Act 1974 s 60 or a consent under s 61 (**ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARAS 835, 838): Environmental Protection Act 1990 s 81(6) (amended by the Noise and Statutory Nuisance Act 1993 s 4). As to defences generally see PARA 204.

6 As to injunctions generally see **INJUNCTIONS**.

7 Environmental Protection Act 1990 s 81(5).

8 *Bradford City Metropolitan Council v Brown* (1986) 19 HLR 16, CA (interim injunction set aside on the grounds that the local authority had failed to adduce any evidence that summary proceedings would not afford an adequate remedy); *Vale of White Horse District Council v Allen & Partners* [1997] Env LR 212, DC (injunction refused inter alia because the local authority, in deciding to launch the proceedings, had not adopted an opinion on whether a criminal prosecution would have been inadequate, but had simply decided that an injunction would be more convenient). Before granting an injunction, the court must be satisfied that the case is urgent or is one involving a deliberate and flagrant flouting of the law: *Vale of White Horse District Council v Allen & Partners* (injunction refused inter alia on the basis that the defendants had already taken the steps required in the abatement notice, albeit that these did not prove sufficient to stop the nuisance).

206. Powers of entry etc.

Any person authorised by a local authority[1] may, on production (if so required) of his authorisation, enter any premises[2] at any reasonable time for the purpose of ascertaining whether or not a statutory nuisance[3] exists or for the purpose of taking any action or executing any work authorised or required by Part III of the Environmental Protection Act 1990[4]. Admission to any premises used wholly or mainly for residential purposes may not except in emergency be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier[5].

A justice of the peace may by warrant authorise any authorised person on behalf of a local authority to enter premises, if necessary by force, if it is shown to the satisfaction of the justice of the peace: (1) that admission to any premises has been refused, or that refusal is apprehended, or that the premises are unoccupied or the occupier is temporarily absent, or that the case is one of emergency, or that an application for admission would defeat the object of entry; and (2) that there is reasonable ground for entry into the premises for the purpose for which entry is required[6].

The authorised person may: (a) take with him such other persons and such equipment as may be necessary; (b) carry out such inspections, measurements and tests as he considers necessary for the discharge of any of the local authority's functions[7]; and (c) take away such samples or articles as he considers necessary for that purpose[8]. On leaving any unoccupied premises, the authorised person must leave them as effectually secured against trespassers as he found them[9].

Similarly, for the purpose of taking any action or executing any work authorised by or required under Part III of the Environmental Protection Act 1990 in relation to a statutory nuisance caused by noise emitted from or caused by a vehicle, machinery or equipment[10], any person authorised by a local authority may, on production (if so required) of his authority: (i) enter or open a vehicle, machinery or equipment, if necessary by force; or (ii) remove a vehicle, machinery or equipment from a street to a secure place[11]. Before a vehicle, machinery or equipment is entered, opened or removed, the local authority must notify the police of the intention to take action[12]; and after a vehicle, machinery or equipment has been removed, the local authority must notify the police of its removal and current location[13]. On leaving any unattended vehicle, machinery or equipment that he has entered or opened under these provisions, the authorised person must leave it secured against interference or theft in such manner and as effectually as he found it[14]; and, if he is unable to comply with this requirement, he must for the purpose of securing the unattended vehicle, machinery or equipment either immobilise it by such means as he considers expedient or remove it from the street to a secure place[15]. The authorised person must not cause more damage than is necessary[16].

A person who wilfully obstructs any person acting in the exercise of any of these powers[17] is liable to a penalty[18].

1 As to the meaning of 'local authority' see PARA 155 note 5.

2 As to the meaning of 'premises' see PARA 160.

3 As to statutory nuisances see PARA 156. As to the meaning of 'nuisance' see PARA 159.

4 Environmental Protection Act 1990 s 81(7), Sch 3 para 2(1). Pt III comprises ss 79-84 (see PARAS 155-172, 199 et seq). Unless the disclosure was made in the performance of his duty or with the consent of the person having the right to disclose the information, a person who discloses any information relating to any trade secret obtained in the exercise of any powers conferred by Sch 3 para 2 is liable on summary conviction to a fine not exceeding level 5 on the standard scale: see Sch 3 para 3(2). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

5 Environmental Protection Act 1990 Sch 3 para 2(2).

6 See the Environmental Protection Act 1990 Sch 3 para 2(3). The warrant continues in force until the purpose for which the entry is required has been satisfied: Sch 3 para 2(6). For these purposes, any reference to an 'emergency' is a reference to a case where the person requiring entry has reasonable cause to believe that circumstances exist which are likely to endanger life or health and that immediate entry is necessary to verify the existence of those circumstances or to ascertain their cause and to effect a remedy: Sch 3 para 2(7). Some evidence of the existence of a statutory nuisance must be shown: *Vines v Governors of the North London Collegiate and Camden School for Girls* (1899) 63 JP 244, 43 Sol Jo 208, DC.

7 Ie under the Environmental Protection Act 1990 Pt III.

8 Environmental Protection Act 1990 Sch 3 para 2(4).

9 Environmental Protection Act 1990 Sch 3 para 2(5).

10 Ie a statutory nuisance within the Environmental Protection Act 1990 s 79(1)(ga): see PARA 156 head (10).

11 Environmental Protection Act 1990 Sch 3 para 2A(1) (Sch 3 para 2A added by the Noise and Statutory Nuisance Act 1993 s 4).

12 Environmental Protection Act 1990 Sch 3 para 2A(5) (as added: see note 11). Notification under Sch 3 para 2A(5) or (6) may be given to the police at any police station in the local authority's area or, in the case of the Temples, at any police station of the City of London police: Sch 3 para 2A(7) (as so added).

13 Environmental Protection Act 1990 Sch 3 para 2A(6) (as added: see note 11). See also note 12.

14 Environmental Protection Act 1990 Sch 3 para 2A(2) (as added: see note 11). See also note 15.

15 Environmental Protection Act 1990 Sch 3 para 2A(3) (as added: see note 11). Any expenses reasonably incurred by a local authority under Sch 3 para 2A(2) or (3) are to be treated as expenses incurred by the authority under s 81(3) (see PARA 207) in abating or preventing the recurrence of the statutory nuisance in question: Sch 3 para 2A(8) (as so added).

16 Environmental Protection Act 1990 Sch 3 para 2A(4) (as added: see note 11).

17 Ie any of the powers conferred by the Environmental Protection Act 1990 Sch 3 para 2 or Sch 3 para 2A.

18 Environmental Protection Act 1990 Sch 3 para 3(1) (amended by the Noise and Statutory Nuisance Act 1993 s 4). The penalty on summary conviction is a fine not exceeding level 3 on the standard scale: see the Environmental Protection Act 1990 Sch 3 para 3(1).

207. Abatement by a local authority.

Where an abatement notice[1] has not been complied with, the local authority[2] may, whether or not it takes proceedings for an offence[3], abate the nuisance and do whatever may be necessary in execution of the notice[4]. In the case of noise emitted from premises[5], the power to abate includes power to seize and remove any equipment which it appears to the local authority is being or has been used in the emission of the noise in question[6].

Any expenses reasonably incurred by a local authority in abating, or preventing the recurrence of, a statutory nuisance may be recovered by it from the person by whose act or default the nuisance was caused; and, if that person is the owner of the premises, from any person who is for the time being the owner of the premises[7]. In proceedings to recover any such expenses, the court may apportion the expenses between persons by whose acts or defaults the nuisance is caused in such manner as the court considers fair and reasonable[8].

1 As to the meaning of 'abatement notice' see PARA 200.

2 As to the meaning of 'local authority' see PARA 155 note 5.

3 Ie under the Environmental Protection Act 1990 s 80(4): see PARA 203.

4 Environmental Protection Act 1990 s 81(3). This is a power and not a duty, so that a mandatory order (formerly known as an order of mandamus) cannot be obtained to compel the authority to abate the nuisance: *Re Ham Board of Health, ex p Bassett* (1857) 3 Jur NS 136, DC.

5 Ie where the matter is a statutory nuisance by virtue of the Environmental Protection Act 1990 s 79(1)(g): see PARA 156 head (9). As to the meaning of 'premises' see PARA 160.

6 Noise Act 1996 s 10(7). As to the power of seizure under the Noise Act 1996 see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 853. A person who wilfully obstructs any person exercising any powers conferred by virtue of s 10(7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 10(8). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Under the ordinary power of a local authority to abate, it has been held that a local authority could obtain a court order authorising it to search a flat and seize the radio of the defendant who had failed to comply with an abatement notice for noise nuisance: *Liverpool City Council v Mawdsley* (1992) 4 LMELR 51.

7 Environmental Protection Act 1990 s 81(4). As to recovery of the expenses of abatement from the owner of the premises see PARA 208.

8 Environmental Protection Act 1990 s 81(4). As to apportionment see *Watney Combe Reid & Co Ltd v Westminster City Council* (1970) 68 LGR 639, 214 Estates Gazette 1631, CA. As to the power to exclude an apportionment by agreement see *Monk v Arnold* [1902] 1 KB 761, DC; *Monro v Lord Burghclere* [1918] 1 KB 291, DC; *Horner v Franklin* [1905] 1 KB 479, CA.

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208. Recovery of expenses of abatement from owner of premises.

Where any expenses are recoverable[1] from a person who is the owner[2] of the premises and the local authority[3] serves a notice[4] on him under these provisions: (1) the expenses carry interest, at such reasonable rate as the local authority may determine, from the date of service of the notice until the whole amount is paid[5]; and (2) the expenses and accrued interest are a charge on the premises[6]. On the date on which a local authority serves a notice on a person under these provisions, the authority must also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge[7].

The amount of any expenses specified in a notice and the accrued interest are a charge on the premises as from the end of the period of 21 days beginning with the date of service of the notice[8] or, where an appeal is brought, as from the final determination of the appeal[9], until the expenses and interest are recovered[10].

A person served with a notice or copy of a notice may appeal against the notice to the county court within the period of 21 days beginning with the date of service[11]. On such an appeal, the court may: (a) confirm the notice without modification; (b) order that the notice is to have effect with the substitution of a different amount for the amount originally specified in it; or (c) order that the notice is to be of no effect[12].

Where any expenses are a charge on premises under these provisions, the local authority may by order declare the expenses to be payable with interest[13] by instalments within the specified period[14] until the whole amount is paid[15]. The instalments and interest, or any part of them, may be recovered from the owner or occupier for the time being of the premises[16].

1 Ie under the Environmental Protection Act 1990 s 81(4): see PARA 207.

2 For the purposes of the Environmental Protection Act 1990 s 81A, 'owner', in relation to any premises, means a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rackrent of the premises or, where the premises are not let at a rackrent, would be so entitled if they were so let; and 'premises' does not include a vessel: s 81A(9) (s 81A added by the Noise and Statutory Nuisance Act 1993 s 10(2)). As to the meaning of 'premises' generally see PARA 160.

3 As to the meaning of 'local authority' see PARA 155 note 5. For the purpose of enforcing a charge under these provisions, a local authority has all the same powers and remedies under the Law of Property Act 1925, and otherwise, as if the authority were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver (see **MORTGAGE** vol 32 (2005 Reissue) PARA 640 et seq): Environmental Protection Act 1990 s 81A(8) (as added: see note 2).

4 A notice served under the Environmental Protection Act 1990 s 81A must: (1) specify the amount of the expenses that the local authority claims is recoverable; (2) state the effect of s 81A(1) (see heads (1)-(2) in the text) and the rate of interest determined by the local authority under that provision; and (3) state the effect of s 81A(4)-(6) (see the text to notes 8-11): s 81A(2) (as added: see note 2).

5 Environmental Protection Act 1990 s 81A(1)(a) (as added: see note 2).

6 Environmental Protection Act 1990 s 81A(1)(b) (as added: see note 2).

7 Environmental Protection Act 1990 s 81A(3) (as added: see note 2).

8 Environmental Protection Act 1990 s 81A(4)(a) (as added: see note 2).

9 Environmental Protection Act 1990 s 81A(4)(b) (as added: see note 2). For these purposes, the withdrawal of an appeal has the same effect as a final determination of the appeal: s 81A(5) (as so added).

10 Environmental Protection Act 1990 s 81A(4) (as added: see note 2).

11 Environmental Protection Act 1990 s 81A(6) (as added: see note 2).

12 Environmental Protection Act 1990 s 81A(7) (as added: see note 2).

13 For these purposes, 'interest' means interest at the rate determined by the local authority under the Environmental Protection Act 1990 s 81A(1): s 81B(2) (s 81B added by the Noise and Statutory Nuisance Act 1993 s 10(2)).

14 'Specified period' means such period of 30 years or less from the date of service of the notice under the Environmental Protection Act 1990 s 81A as is specified in the order: s 81B(2) (as added: see note 13).

15 Environmental Protection Act 1990 s 81B(1) (as added: see note 13).

16 Environmental Protection Act 1990 s 81B(3) (as added: see note 13). Any sums recovered from an occupier may be deducted by him from the rent of the premises: s 81B(4) (as so added). An occupier may not be required to pay at any one time any sum greater than the aggregate of: (1) the amount that was due from him on account of rent at the date on which he was served with a demand from the local authority together with a notice requiring him not to pay rent to his landlord without deducting the sum demanded; and (2) the amount that has become due from him on account of rent since that date: s 81B(5) (as so added).

209. Expedited procedure for premises that are unhealthy or a nuisance.

If it appears to a local authority[1] that any premises[2] are in such a state as to be prejudicial to health[3] or a nuisance[4] (a 'defective state') and that unreasonable delay in remedying the defective state would be occasioned by following the abatement procedure[5], the local authority may employ a special expedited procedure to deal with the defective premises under the Building Act 1984[6].

Under this procedure, the local authority may serve on the person on whom it would have been appropriate to serve an abatement notice[7] (if the local authority had proceeded under the abatement procedure) a notice stating that the local authority intends to remedy the defective state and specifying the defects that it intends to remedy[8]. The local authority may, after the expiration of nine days after service of such a notice, execute such works as may be necessary to remedy the defective state, and recover the expenses reasonably incurred in so doing from the person on whom the notice was served[9].

However, if, within seven days after service of such a notice, the person on whom the notice was served serves a counter-notice that he intends to remedy the specified defects[10], the local authority may take no action in pursuance of the first-mentioned notice[11] unless the person who served the counter-notice fails within what seems to the local authority a reasonable time to begin to execute the works to remedy those defects[12] or, having begun to execute such works, fails to make such progress towards their completion as seems to the local authority reasonable[13].

In proceedings to recover expenses[14]: (1) the court must inquire whether the local authority was justified in concluding that the premises were in a defective state, or that unreasonable delay in remedying the defective state would have been occasioned by following the abatement procedure[15]; and (2) if the defendant proves that he served a counter-notice, the court must inquire whether the defendant failed to begin the works to remedy the defects within a reasonable time or failed to make reasonable progress towards their completion[16]. If the court determines that the local authority was not justified in either of the conclusions mentioned in head (1) above[17] or that there was no failure under head (2) above[18], the local authority may not recover the expenses or any part of them[19]. In proceedings to recover expenses, the court may: (a) inquire whether the expenses ought to be borne wholly or in part by some person other than the defendant in the proceedings[20]; and (b) make such order concerning the expenses or their apportionment as appears to the court to be just[21]. The court may not, however, order the expenses or any part of them to be borne by a person other than the defendant in the proceedings unless the court is satisfied that the other person has had due notice of the proceedings and an opportunity of being heard[22].

1 For the purposes of the Building Act 1984, 'local authority' means the council of a district or London borough, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, the Under Treasurer of the Middle Temple but, in relation to Wales, means the council of a county or county borough: s 126 (definition substituted by the Local Government Act 1985 s 16, Sch 8 para 14(4); and amended by the Local Government (Wales) Act 1994 s 22(3), Sch 9 para 15(3)).

2 In the Building Act 1984, 'premises' includes buildings, land, easements and hereditaments of any tenure: s 126. As to the meaning of 'premises' in relation to statutory nuisance under the Environmental Protection Act 1990 see PARA 160.

3 As to the meaning of 'prejudicial to health' see PARA 158.

4 As to the meaning of 'nuisance' see PARA 159.

5 Ie the procedure prescribed by the Environmental Protection Act 1990 s 80: see PARA 200 et seq.

6 See the Building Act 1984 s 76(1) (amended by the Environmental Protection Act 1990 s 162(1), Sch 15 para 24). See also **BUILDING** vol 4(2) (2002 Reissue) PARA 397.

7 As to the meaning of 'abatement notice' see PARA 200.

8 See the Building Act 1984 s 76(1) (as amended: see note 6). A local authority may not serve a notice under s 76(1) or proceed with the execution of works in accordance with a notice so served, if the execution of the works would, to its knowledge, be in contravention of a building preservation order: s 76(6). Buildings which were subject to building preservation orders on 1 January 1969 are now deemed to be listed buildings: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1, Sch 1 para 1; and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1096. The power conferred on a local authority by the Building Act 1984 s 76(1) may be exercised notwithstanding that the local authority might instead have proceeded under the Housing Act 1985 Pt VI (ss 189-208) (repealed) (repair notices): Building Act 1984 s 76(7) (amended by the Housing (Consequential Provisions) Act 1985 s 4, Sch 2 para 58(2)). As to housing conditions and housing standards under the Housing Act 2004 see **HOUSING** vol 22 (2006 Reissue) PARA 359 et seq.

9 Building Act 1984 s 76(2).

10 Ie the defects specified in the notice served by the local authority under the Building Act 1984 s 76(1): see the text to note 8.

11 Building Act 1984 s 76(3).

12 Building Act 1984 s 76(3)(a).

13 Building Act 1984 s 76(3)(b).

14 Ie under Building Act 1984 s 76(2): see the text to note 9.

15 Building Act 1984 s 76(4)(a) (amended by the Environmental Protection Act 1990 Sch 15 para 24). As to the procedure referred to in the text see note 5.

16 Building Act 1984 s 76(4)(b).

17 Building Act 1984 s 76(4)(i).

18 Building Act 1984 s 76(4)(ii).

19 Building Act 1984 s 76(4).

20 Building Act 1984 s 76(5)(a).

21 Building Act 1984 s 76(5)(b).

22 Building Act 1984 s 76(5).

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(iii) Proceedings by Others

210. Institution of proceedings by persons aggrieved.

Independently of the power of a local authority[1] to abate a statutory nuisance[2], any person aggrieved by a statutory nuisance may institute proceedings for an order requiring the abatement of the nuisance or the prohibition of its recurrence[3]. Such proceedings can be, and often are, brought against a local authority[4]. The proceedings are commenced by a complaint[5].

A complaint can only be made if the nuisance exists at the time that the complaint is made[6]. The provisions relating to abatement do not create a civil cause of action in respect of damage resulting from a statutory nuisance[7].

Generally, the proceedings are to be brought against the person responsible[8] for the nuisance[9]. However:

74 (1) where the nuisance arises from any defect of a structural character, the proceedings must be brought against the owner of the premises[10];

75 (2) where the person responsible for the nuisance cannot be found, the proceedings must be brought against the owner or occupier of the premises[11]; and

76 (3) in the case of a statutory nuisance caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment in a street[12], the proceedings must be brought against the person responsible for the vehicle, machinery or equipment[13].

Where more than one person is responsible for a statutory nuisance, these provisions[14] apply to each of those persons, whether or not what any one of them is responsible for would, by itself, amount to a nuisance[15].

Before instituting proceedings for such an order against any person, the person aggrieved by the nuisance must give to that person notice in writing of his intention to bring the proceedings[16] and the notice must specify the matter complained of[17]. The notice is not the same as an abatement notice[18] and the requirements for its validity are not as strict, but:

77 (a) where it relates to premises, the notice must specify the premises in question[19];

78 (b) the notice must indicate the basis upon which the recipient is said to be obliged to abate the nuisance[20]; and

79 (c) the notice must indicate very broadly the matters complained of[21].

1 As to the meaning of 'local authority' see PARA 155 note 5.

2 As to the power of a local authority to abate a statutory nuisance see PARA 200 et seq. As to statutory nuisances see PARA 156. As to the meaning of 'nuisance' see PARA 159.

3 Ie under the Environmental Protection Act 1990 s 82.

4 See eg *R v Epping (Waltham Abbey) Justices, ex p Burlinson* [1948] 1 KB 79, [1947] 2 All ER 537, DC. This is generally considered to be the first authority in which the power of magistrates to make an order against a local authority was questioned and dealt with; earlier cases exist, but there was no challenge founded upon the recipient being a local authority: see eg *Scarborough Corpn v Scarborough Rural Sanitary Authority* (1876) 1 Ex D 344; *R v Parlby* (1899) 22 QBD 520; *Fulham Vestry v London County Council* [1897] 2 QB 76.

5 See the Environmental Protection Act 1990 s 82(1); and PARA 211.

6 *Pearshouse v Birmingham City Council* [1999] LGR 169, 31 HLR 756.

7 *Issa v Hackney London Borough Council* [1997] 1 All ER 999, [1997] 1 WLR 956, CA (civil claim for damages rejected, although the plaintiffs did receive a compensation order in the criminal proceedings).

8 As to the meaning of 'person responsible' see PARA 201 note 4. If the person bringing the proceedings has previously prevented the defendant from remedying the matter complained of, the defendant is not the person responsible for the nuisance: *Warner v Lambeth London Borough Council* (1984) 15 HLR 42, where the local authority had been ready and able to carry out remedial work to the flat but the tenant, wanting to be re-housed, had sent the workmen away. As to a tenant refusing a landlord access in order to deal with a matter that is making premises defective see also *Carr v Hackney London Borough Council* (1995) 93 LGR 606, 160 JP 402, DC; *R v Metropolitan Stipendiary Magistrate, ex p Mahmed Ali* [1997] Env LR D15, DC. See also *Quigley v Liverpool Housing Trust* [2000] EHLR 130, [1999] EGCS 94. A landlord is not the person responsible if the cause is something external and he has done everything reasonably practicable to protect the premises from that

external thing: *Southwark London Borough Council v Ince* [1989] COD 549, 21 HLR 504, DC (although this decision has been doubted: see *R (on the application of Vella) v Lambeth London Borough Council* [2005] EWHC 2473 (Admin), (2005) Times, 23 November, [2005] All ER (D) 171 (Nov); and PARA 158). However, where premises have been properly constructed and adequately insulated to exclude noise, but, owing to changes in the surroundings, these measures prove inadequate against noise nuisance, the landlord may be liable because the obligation imposed is a continuous one: *Haringey London Borough Council v Jowett* [1999] EHLR 410, [1999] LGR 667, DC (although it was held in this case that the wide housing responsibilities and limited resources of a housing authority must be considered).

9 Environmental Protection Act 1990 s 82(4)(a) (amended by the Noise and Statutory Nuisance Act 1993 s 5).

10 Environmental Protection Act 1990 s 82(4)(b). As to the meaning of 'premises' see PARA 160.

11 Environmental Protection Act 1990 s 82(4)(c).

12 See the Environmental Protection Act 1990 s 79(1)(ga); and PARA 156 head (10).

13 Environmental Protection Act 1990 s 82(4)(d) (added by the Noise and Statutory Nuisance Act 1993 s 5). In relation to a statutory nuisance within the Environmental Protection Act 1990 s 79(1)(ga) caused by noise emitted from or caused by an unattended vehicle or unattended machinery or equipment for which more than one person is responsible, proceedings are to be brought against any person responsible for the vehicle, machinery or equipment: s 82(4)(d), (5B) (added by the Noise and Statutory Nuisance Act 1993 s 5).

14 Ie the Environmental Protection Act 1990 s 82(1)-(4).

15 Environmental Protection Act 1990 s 82(5) (amended by the Noise and Statutory Nuisance Act 1993 s 5(4)). In relation to a statutory nuisance within the Environmental Protection Act 1990 s 79(1)(ga) (see PARA 156 head (10)) for which more than one person is responsible (whether or not what any one of those persons is responsible for would, by itself, amount to such a nuisance), proceedings are to be brought, except in cases falling within heads (1)-(3) in the text, against each person responsible for the nuisance who can be found: see s 82(4)(a), (5A) (added by the Noise and Statutory Nuisance Act 1993 s 5).

16 Environmental Protection Act 1990 s 82(6). This provision reverses the effect of *Sandwell Metropolitan Borough Council v Bujok* [1990] 3 All ER 385, [1990] 1 WLR 1350, HL, where it was held that under the Public Health Act 1936 there was no obligation on an aggrieved person to give notice to the proposed defendant before commencing proceedings.

The notice which is applicable is: (1) in the case of a nuisance falling within the Environmental Protection Act 1990 s 79(1)(g) or (ga) (see PARA 156 heads (9), (10)), not less than three days' notice; and (2) in the case of a nuisance of any other description, not less than 21 days' notice: s 82(7) (amended by the Noise and Statutory Nuisance Act 1993 s 5). However, the Secretary of State may, by order, provide that this provision is to have effect as if such period as is specified in the order were the minimum period of notice applicable to any description of statutory nuisance specified in the order: Environmental Protection Act 1990 s 82(7) (as so amended). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 129 note 7.

As to serving of notices see s 160; and PARA 201. See also *Hall v Kingston upon Hull City Council* [1999] 2 All ER 609, 31 HLR 1078, DC.

17 Environmental Protection Act 1990 s 82(6).

18 *R v Liverpool Crown Court, ex p Cooke* [1996] 4 All ER 589, [1997] 1 WLR 700, DC. The only purpose of the notice is to draw the defendant's attention to matters about which the complainant intends to complain: *East Staffordshire Borough Council v Fairless* [1999] Env LR 525, (1998) 31 HLR 677 (where the court upheld a notice that comprised a surveyor's report and an accompanying letter that together did not give details of all the matters complained of or specify a remedy). As to the meaning of 'abatement notice' see PARA 200.

19 *Pearshouse v Birmingham City Council* [1999] LGR 169, 31 HLR 756 (complaint relating to damp premises; court upheld a notice comprising a letter appending a surveyor's report, even though the letter described the report as listing some but not all of the matters contributing to the condition of the premises and even though the report did not identify which were said to be relevant to the statutory nuisance and which were said to constitute a breach of the implied covenant to repair). It does not matter that the person giving the notice is wrong in his identification or fails to identify all the matters said to constitute the statutory nuisance: *Pearshouse v Birmingham City Council*. The notice does not need to specify the works required to remedy the complaint: *East Staffordshire Borough Council v Fairless* [1999] Env LR 525, 31 HLR 677.

20 *Pearshouse v Birmingham City Council* [1999] LGR 169, 31 HLR 756; and see note 19.

21 *Pearshouse v Birmingham City Council* [1999] LGR 169, 31 HLR 756; and see note 19.

211. Proceedings by persons aggrieved.

Where the requisite notice has been given[1], a magistrates' court may act on a complaint made by any person on the ground he is aggrieved by the existence of a statutory nuisance[2].

If the magistrates' court is satisfied that the alleged nuisance exists[3], or that although abated it is likely to recur on the same premises[4] or, in the case of a nuisance caused by noise emitted from or caused by a vehicle, machinery or equipment in a street[5], in the same street, the court must make an order for either or both of the following purposes[6]:

80 (1) requiring the defendant to abate the nuisance within a time specified in the order, and to execute any works necessary for that purpose[7];

81 (2) prohibiting a recurrence of the nuisance, and requiring the defendant, within a time specified in the order, to execute any works necessary to prevent the recurrence[8].

The court may also impose a fine on the defendant[9]. If the magistrates' court is satisfied that the alleged nuisance exists and is such as, in the opinion of the court, to render the premises unfit for human habitation, the order made may prohibit the use of the premises for human habitation until the premises are, to the satisfaction of the court, rendered fit for that purpose[10].

Where, on the hearing of proceedings for an order under these provisions, it is proved that the alleged nuisance existed at the date of the making of the complaint, then, whether or not at the date of the hearing that nuisance still exists or is likely to recur, the court must order the defendant (or defendants in such proportions as appears fair and reasonable) to pay the person bringing the proceedings such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings[11]. Advance notice should be given of a claim for costs[12]. The court is not obliged to give reasons for an award of costs[13].

1 See PARA 210.

2 Environmental Protection Act 1990 s 82(1). As to statutory nuisances see PARA 156. As to the meaning of 'nuisance' see PARA 159.

The proceedings are criminal in nature, because there is a power to impose a fine: see s 82(2); and the text to note 9. Since the proceedings are in the nature of criminal proceedings, the standard of proof required of a complainant is the higher criminal standard rather than the civil standard: *Lewisham London Borough Council v Fenner* (1995) 248 ENDS Report 44; *Davenport v Walsall Metropolitan Borough Council* [1997] Env LR 24, (1995) 28 HLR 754, DC; *Herbert v Lambeth London Borough Council* (1991) 24 HLR 299, 90 LGR 310, DC. See also *Northern Ireland Trailers Ltd v Preston Corpn* [1972] 1 All ER 260, [1972] 1 WLR 203, DC; *R v Newham Justices, ex p Hunt* [1976] 1 All ER 839, [1976] 1 WLR 420, DC; *R v Inner London Sessions Crown Court, ex p Bentham* [1989] 1 WLR 408, 21 HLR 171, DC.

A failure to give proper particulars will not per se vitiate the information; the court has a limited discretion to amend an information: *Blackpool Borough Council v Johnstone* [1992] COD 463. See also *Pearshouse v Birmingham City Council* [1999] LGR 169, 31 HLR 756; and PARA 210.

As to the person aggrieved see *A-G of Gambia v N'Jie* [1961] AC 617 at 634, [1961] 2 All ER 504 at 511, PC; *IRC v National Federation of Self Employed and Small Businesses Ltd* [1982] AC 617, [1981] 2 All ER 93, HL;

Birmingham District Council v McMahon (1987) 19 HLR 452, 86 LGR 63, DC; *Sandwell Metropolitan Borough Council v Bujok* [1990] 3 All ER 385, [1990] 1 WLR 1350, HL.

3 The relevant date on which the justices are to consider whether a nuisance exists or, though abated, is likely to recur is the date of the hearing: *Coventry City Council v Doyle* [1981] 2 All ER 184, [1981] 1 WLR 1325, DC; *R v Liverpool Crown Court, ex p Cooke* [1996] 4 All ER 589, [1997] 1 WLR 700, DC.

4 As to the meaning of 'premises' see PARA 160.

5 Ie a nuisance within the Environmental Protection Act 1990 s 79(1)(ga): see PARA 156 head (10).

6 Environmental Protection Act 1990 s 82(2) (amended by the Noise and Statutory Nuisance Act 1993 s 5). If satisfied as to the matters in the Environmental Protection Act 1990 s 82(2), the magistrates have a duty to make an abatement order, but they have a wide discretion as to the terms of such order, in particular, the steps that are necessary to abate the nuisance: *Nottingham Friendship Housing Association Ltd v Newton* [1974] 2 All ER 760, sub nom *Nottingham City District Council v Newton* [1974] 1 WLR 923, DC; *McGillivray v Stephenson* [1950] 1 All ER 942, [1950] WN 209, DC. An applicant is entitled to an order for abatement of a statutory nuisance under the Environmental Protection Act 1990 s 82 even though he has obtained an injunction in civil proceedings against his landlord to enforce an agreement to keep the property in repair: *R v Highbury Corner Magistrates' Court, ex p Edwards* [1994] Env LR 215, 26 HLR 682, DC. The order should be in as specific terms as possible: *Salford City Council v McNally* [1976] AC 379, [1975] 2 All ER 860, HL; *R v Fenny Stratford Justices, ex p Watney Mann (Midlands) Ltd* [1976] 2 All ER 888, [1976] 1 WLR 1101, DC; *Wivenhoe Port Ltd v Colchester Borough Council* [1985] JPL 396, CA; *R v Secretary of State for the Environment, ex p Watney Mann (Midlands) Ltd* [1976] JPL 368, DC; *R v Wheately* (1885) 16 QBD 34; *R v Horrocks etc Justices, ex p Boustead* (1900) 69 LJQB 688; *Whatling v Rees* (1940) 79 JP 209, DC. However, magistrates are given considerable discretion as to the precise terms such an order may take: *Nottingham Corpn v Newton*; *Birmingham District Council v Kelly* (1985) 17 HLR 572. It may be, however, that what is required to be done is so clearly to be implied from the order that it is not necessary to go beyond a prohibition: *Millard v Wastall* [1898] 1 QB 342, DC; *Tough v Hopkins* [1904] 1 KB 804, DC; *Central London Rly Co v Hammersmith London Borough Council* (1904) 68 JP 217, DC. Where a housing authority is involved, the magistrates should take into account that the authority may have a very heavy housing responsibility: *Birmingham District Council v Kelly*; cf *Haringey London Borough Council v Jowett* [1999] EHLR 410, [1999] LGR 667, DC.

7 Environmental Protection Act 1990 s 82(2)(a).

8 Environmental Protection Act 1990 s 82(2)(b).

9 Environmental Protection Act 1990 s 82(2). The fine must not exceed level 5 on the standard scale: s 82(2). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. See *R (on the application of Islington London Borough Council) v Inner London Crown Court* [2003] EWHC 2500 (Admin), [2004] Env LR 20, [2003] All ER (D) 197 (Oct) (ambit of sentencing discretion when works to abate the nuisance had been agreed and substantially carried out).

Where a court imposes a fine, it may also make an award of compensation to an aggrieved person: see the Powers of Criminal Courts (Sentencing) Act 2000 s 130; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 375 et seq.

10 Environmental Protection Act 1990 s 82(3). Whether a house is unfit for habitation is a question of fact for the magistrates: *Hall v Manchester Corpn* (1915) 84 LJ Ch 732, HL. The fact that there has not been compliance with statutory requirements or standards does not necessarily mean that a house is unfit for habitation: *Birchall v Wirrall UDC* (1953) 117 JP 384, CA. As to the meaning of 'unfit for human habitation' see *Morgan v Liverpool Corpn* [1927] 2 KB 131, CA.

11 Environmental Protection Act 1990 s 82(12). A compensation order can be made under the Powers of Criminal Courts (Sentencing) Act 2000 s 130 (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 375 et seq): *Botross v Hammersmith and Fulham London Borough Council* [1995] Env LR 217, (1994) 27 HLR 179, DC (decided in relation to the Powers of Criminal Courts Act 1973 s 35 (now repealed)). The accepted principles that govern the exercise of discretion in the making of compensation orders apply to cases of statutory nuisance, including the principle that the making of an order should be confined to simple, straightforward cases: *Davenport v Walsall Metropolitan Borough Council* [1997] Env LR 24, DC. A compensation order for a statutory nuisance can be made only in respect of the period for which the nuisance is claimed to exist in the summons instituting the proceedings: *R v Liverpool Crown Court, ex p Cooke* [1996] 4 All ER 589, [1997] 1 WLR 700, DC, where there had been evidence that the nuisance existed prior to the date of the summons but that fact had not been stated in the summons. See also *R v Crown Court at Knightsbridge, ex p Abdillahi* [1999] Env LR D1. There is a presumption that the complainant is liable to pay his solicitor's costs, and he will only be required to prove that he was so liable if the defendant raises a genuine issue as to the liability; merely putting the complainant to proof will be insufficient to rebut the presumption: *Hazlett v Sefton Metropolitan Borough Council* [2000] 4 All ER 887, DC.

12 *Taylor v Walsall and District Property and Investment Co Ltd* (1998) 30 HLR 1062, [1998] Env LR 600, DC, where the court also held that the respondent should state in advance whether the claim for costs was accepted and, if not, the basis upon which it was challenged. Where a large sum is claimed as costs, the court must investigate the claim and the grounds for any challenge to them: *Taylor v Walsall and District Property and Investment Co Ltd*. The requirement to award costs once a court is satisfied that the statutory nuisance existed at the time of the complaint is mandatory; it does not matter that the proceedings are unnecessary, eg because the defendant has agreed to abate the nuisance: *Hollis v Dudley Metropolitan Borough Council* [1998] 1 All ER 759, [1999] 1 WLR 642, DC. While the court has a discretion in deciding whether costs have been properly incurred, the fact that a claim for a compensation order has been unsuccessful does not of itself mean that the costs were improperly incurred: *Davenport v Walsall Metropolitan Borough Council* [1997] Env LR 24, DC. The costs recoverable include the necessary expenses incurred prior to the bringing of the proceedings (for example, the cost of giving notice and of preparing a report): *Hollis v Dudley Metropolitan Borough Council*. The court will not award costs where the applicant has entered into a contingency arrangement with his solicitor: *British Waterways Board v Norman* (1993) 26 HLR 232, DC.

13 *R v Southend Stipendiary Magistrate, ex p Rochford District Council* [1995] Env LR 1; *Camden London Borough Council v London Underground Ltd* [2000] Env LR 369, [1999] All ER (D) 1439, DC.

212. Contravention of an abatement or prohibition order.

A person who without reasonable excuse[1] contravenes any requirement or prohibition of an order made by a magistrates' court relating to statutory nuisance[2] is guilty of an offence[3]. In any proceedings for such an offence in respect of certain statutory nuisances[4], it is a defence to prove that the best practicable means[5] were used to prevent, or to counteract the effects of, the nuisance[6]. If a person is convicted of such an offence, a magistrates' court may, after giving the local authority[7] in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the person convicted was required to do by the order to which the conviction relates[8]. If it appears to the magistrates' court that neither the person responsible[9] for the nuisance nor the owner or occupier of the premises or (as the case may be) the person responsible for the vehicle, machinery or equipment can be found, the court may, after giving the local authority in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the court would have ordered that person to do[10].

1 As to what constitutes 'reasonable excuse' see PARA 203 note 3.

2 Ie an order made under the Environmental Protection Act 1990 s 82(2): see PARA 211. As to statutory nuisances see PARA 156. As to the meaning of 'nuisance' see PARA 159.

3 Environmental Protection Act 1990 s 82(8). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction: s 82(8). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Where a court does impose a fine, it may also make an award of compensation to an aggrieved person: see the Powers of Criminal Courts (Sentencing) Act 2000 s 130; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 375 et seq.

4 The defence under the Environmental Protection Act 1990 s 82(9) is not available:

11 (1) in the case of a nuisance falling within s 79(1)(a), (d), (e), (f), (fa) or (g) (see PARA 156 heads (1), (4)-(7), (9)) except where the nuisance arises on industrial, trade or business premises (s 82(10)(a) (amended by the Clean Neighbourhoods and Environment Act 2005 s 103(1), (4)(a)));

12 (2) in the case of a nuisance falling within the Environmental Protection Act 1990 s 79(1)(fb) (see PARA 156 head (8)) except where: (a) the artificial light is emitted from industrial, trade or business premises; or (b) the artificial light (not being light to which head (a) applies) is emitted by lights used for the purpose only of illuminating an outdoor relevant sports facility (s 82(10)(aza) (added by the Clean Neighbourhoods and Environment Act 2005 s 103(1), (4)(b)));

13 (3) in the case of a nuisance falling within the Environmental Protection Act 1990 s 79(1)(ga) (see PARA 156 head (10)) except where the noise is emitted from or caused by a vehicle, machinery or equipment being used for industrial, trade or business premises (s 82(10)(aa) (added by the Noise and Statutory Nuisance Act 1993 s 5));

14 (4) in the case of a nuisance falling within the Environmental Protection Act 1990 s 79(1)(b) (see PARA 156 head (2)) except where the smoke is emitted from a chimney (s 82(10)(b));

15 (5) in the case of a nuisance falling within s 79(1)(c) or (h) (see PARA 156 heads (3), (11)) (s 82(10)(c)); and

16 (6) in the case of a nuisance which is such as to render the premises unfit for human habitation (s 82(10)(d)).

As to the meaning of 'industrial, trade or business premises' see PARA 156 note 12. As to the meaning of 'equipment' see PARA 156 note 20. As to the meaning of 'chimney' see PARA 166 note 7. As to the meaning of 'premises' see PARA 160. As to the meaning of 'relevant sports facility' in the Environmental Protection Act 1990 s 82(10)(aza) (see head (2)) see PARA 204 note 2; applied by s 82(10A) (added by the Clean Neighbourhoods and Environment Act 2005 s 103(1), (5)).

5 As to the meaning of 'best practicable means' see PARA 161.

6 Environmental Protection Act 1990 s 82(9).

7 As to the meaning of 'local authority' see PARA 155 note 5.

8 Environmental Protection Act 1990 s 82(11). Any power conferred by the Environmental Protection Act 1990 to give a direction includes power to vary or revoke the direction: s 161(5). Any direction given under the Environmental Protection Act 1990 must be in writing: s 161(6).

9 As to the meaning of 'person responsible' see PARA 201 note 4.

10 Environmental Protection Act 1990 s 82(13) (amended by the Noise and Statutory Nuisance Act 1993 s 5).

3. REMEDIES

(1) TYPES OF REMEDY AVAILABLE

213. Classes of remedies.

There are four classes of remedies for nuisance, namely abatement without recourse to legal proceedings[1], civil proceedings[2] for damages[3] or injunction[4], summary proceedings for penalties or abatement of statutory nuisances[5], and criminal proceedings[6].

The fact that a statutory remedy is available does not necessarily exclude a common law action.

1 See PARA 214 et seq.

2 See PARAS 173, 175 et seq.

3 See PARAS 227-229.

4 See PARAS 230-236.

5 See eg the Environmental Protection Act 1990 ss 79-82; and PARAS 115, 225-226.

6 See PARA 174.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(2) ABATEMENT/(i) Abatement by Individuals/214. Nature of abatement.

(2) ABATEMENT

(i) Abatement by Individuals

214. Nature of abatement.

Abatement means the summary removal or remedy of a nuisance by the party injured without having recourse to legal proceedings; it is not a remedy which the law favours and is not usually advisable[1]. It is not appropriate in situations involving difficult questions of fact or law, or in cases in which exercise of the right would have an effect on the other party out of all proportion to the harm suffered by the claimant[2]. It is appropriate only in simple cases which would not justify the expense of legal proceedings, and urgent cases which require an immediate remedy[3]. Its exercise destroys any cause of action in respect of the nuisance except for damages in respect of harm sustained before the abatement[4]; but the mere existence of the right to abate does not deprive the injured party of a cause of action if he chooses to sue rather than to exercise the right[5]. If, however, the claimant is unsuccessful in an application for a mandatory injunction he cannot thereafter seek to exercise the right to abate[6].

1 *Earl of Lonsdale v Nelson* (1823) 2 B & C 302 at 312 per Best J; *Campbell Davys v Lloyd* [1901] 2 Ch 518 at 524, CA, per Collins LJ; *Hope v Osborne* [1913] 2 Ch 349; *Lagan Navigation Co v Lambeg Bleaching, Dyeing and Finishing Co Ltd* [1927] AC 226, HL. But as to statutory abatement see PARAS 225-226.

2 *Burton v Winters* [1993] 3 All ER 847 at 852, [1993] 1 WLR 1077 at 1082, CA, per Lloyd LJ.

3 *Burton v Winters* [1993] 3 All ER 847 at 851, [1993] 1 WLR 1077 at 1081, CA, per Lloyd LJ.

4 See *Baten's Case* (1610) 9 Co Rep 53b; *Kendrick v Bartland* (1677) 2 Mod Rep 253, where the exercise of the right to abate a nuisance did not bar the plaintiff from recovering damages in respect of the period before the nuisance was abated; *Lagan Navigation Co v Lambeg Bleaching, Dyeing and Finishing Co Ltd* [1927] AC 226 at 244, HL, per Lord Atkinson; and see also *Lemmon v Webb* [1894] 3 Ch 1 at 24, CA, per Kay LJ (affd [1895] AC 1, HL); *Job Edwards Ltd v Birmingham Navigations* [1924] 1 KB 341 at 356, CA, per Scrutton LJ.

5 See *Sedleigh-Denfield v O'Callaghan* [1940] AC 880 at 900, [1940] 3 All ER 349 at 362, HL, per Lord Atkin. See also *Leakey v National Trust for Places of Historic Interest or Natural Beauty* [1980] QB 485 at 523, [1980] 1 All ER 17 at 34, CA, per Megaw LJ; *Bradburn v Lindsay* [1983] 2 All ER 408 at 413.

6 See PARA 222.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(2) ABATEMENT/(i) Abatement by Individuals/215. Nuisances by commission and by omission.

215. Nuisances by commission and by omission.

The right to abate exists in appropriate cases when the nuisance is caused by an act of commission[1]. However, where the nuisance arises merely from omission on the part of the offender, it is not clear whether it admits of abatement[2] except in the case of the cutting of boughs overhanging private property, when abatement is clearly lawful[3]. Abatement is hardly the proper description of an act which supplies the omission[4].

1 *Penruddock's Case* (1598) 5 Co Rep 100b; *James v Hayward* (1630) Cro Car 184; *R v Rosewell* (1699) 2 Salk 459; *Raikes v Townsend* (1804) 2 Smith KB 9; *Earl of Lonsdale v Nelson* (1823) 2 B & C 302 at 311 per Best J.

2 See *Earl of Lonsdale v Nelson* (1823) 2 B & C 302 at 311 per Best J; *Campbell Davys v Lloyd* [1901] 2 Ch 518, CA; and see *Lemmon v Webb* [1895] AC 1 at 8-9, HL, per Lord Davey, commenting on the dictum of Best J in *Earl of Lonsdale v Nelson*.

3 *Lemmon v Webb* [1895] AC 1 at 9, HL, per Lord Davey; and see *Morrice v Baker* (1616) 3 Bulst 196; *Earl of Lonsdale v Nelson* (1823) 2 B & C 302. The right may also exist when boughs overhang a public highway (see *Earl of Lonsdale v Nelson* at 311 per Best J; *Lemmon v Webb* at 6 per Lord Herschell LC), and in cases of emergency (see *Earl of Lonsdale v Nelson* at 311-312 per Best J).

4 *Campbell Davys v Lloyd* [1901] 2 Ch 518, CA.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(2) ABATEMENT/(i) Abatement by Individuals/216. Public nuisances.

216. Public nuisances.

If the nuisance is public, a private individual may not himself abate it unless it does him some special injury over and above that suffered by the rest of the public[1].

1 *Colchester Corpn v Brooke* (1846) 7 QB 339; *Dimes v Petley* (1850) 15 QB 276; *Bateman v Bluck* (1852) 18 QB 870; *Bagshaw v Buxton Local Board of Health* (1875) 1 ChD 220 at 224 per Jessel MR.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(2) ABATEMENT/(i) Abatement by Individuals/217. Abatement before injury.

217. Abatement before injury.

The injured person need not wait until he has suffered actual injury before exercising his power to abate a nuisance[1], but he cannot justify the removal of scaffolding or foundations of a building on the ground, for example, that when finished it may constitute a nuisance by blocking his ancient lights[2].

1 *Penruddock's Case* (1598) 5 Co Rep 100b.

2 *Morrice v Baker* (1616) 3 Bulst 196, sub nom *Norris v Baker* (1616) 1 Roll Rep 393.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(2) ABATEMENT/(i) Abatement by Individuals/218. Notice, consent and access orders.

218. Notice, consent and access orders.

It has been established that no notice is necessary before abating a nuisance which consists of overhanging boughs, if they can be lopped by the person aggrieved from his own property and without entry on his neighbour's land[1]. There is also authority for saying that, without notice, a nuisance may be abated on the land of another in cases of emergency and in order to protect life or property[2]. It has further been held that abatement without notice may be justified, even if it involves entry on another's land, where the person exercising the right of abatement is the original wrongdoer who brought the nuisance into existence[3], and, possibly, where the nuisance arises from a default in the performance of some legal duty imposed upon the wrongdoer[4]. However, the trend of later judicial opinion has been to require notice in all cases, except in an emergency, when the abatement involves entry on another's land[5]. Except in an emergency, notice is certainly necessary where the person complained of is not the original wrongdoer but continues a nuisance[6], and in all cases where the nuisance arises from omissions[7], and where the premises affected are at the time inhabited[8].

A person who desires to enter[9] upon any adjoining or adjacent land[10] (the 'servient land') for the purpose of carrying out works to any land (the 'dominant land') and who needs, but does not have, the consent of some other person to that entry, may make an application to the High Court or to a county court for an access order against that other person[11]. The court may make an access order if, and only if, it is satisfied that the works are reasonably necessary for the preservation of the whole or any part of the dominant land and that they cannot be carried out, or would be substantially more difficult to carry out, without entry on the servient land[12]. Basic preservation works to the dominant land, which include the treatment, cutting back, felling, removal or replacement of any hedge, tree, shrub or other growing thing which is comprised in, or situate on, the dominant land and which is, or is in danger of becoming, damaged, diseased, dangerous, insecurely rooted or dead, are to be taken for these purposes to be reasonably necessary for the preservation of the dominant land[13].

1 *Lemmon v Webb* [1894] 3 Ch 1, CA (affd [1895] AC 1, HL), but the right to abate by lopping overhanging branches does not carry with it the right to pick and appropriate the fruit from those branches: see *Mills v Brooker* [1919] 1 KB 555; **BOUNDARIES** vol 4(1) (2002 Reissue) PARA 943. See also PARA 215.

2 *Jones v Williams* (1843) 11 M & W 176, accepted to this extent by the Court of Appeal and the House of Lords in *Lemmon v Webb* [1894] 3 Ch 1, CA; affd [1895] AC 1, HL. See also *Earl of Lonsdale v Nelson* (1823) 2 B & C 302 at 312 per Best J.

3 *Penruddock's Case* (1598) 5 Co Rep 100b; *Winsmore v Greenbank* (1745) Willes 577 at 583; *Earl of Lonsdale v Nelson* (1823) 2 B & C 302 at 311-312 per Best J; *Jones v Williams* (1843) 11 M & W 176, where this seems to have been treated as beyond doubt.

4 *Jones v Williams* (1843) 11 M & W 176.

5 See the judgments in the Court of Appeal and the House of Lords in *Lemmon v Webb* [1894] 3 Ch 1, CA; affd [1895] AC 1, HL.

6 *Penruddock's Case* (1598) 5 Co Rep 100b; and see the cases cited in notes 2-3.

7 *Penruddock's Case* (1598) 5 Co Rep 100b.

8 *Perry v Fitzhowe* (1846) 8 QB 757; *Davies v Williams* (1851) 16 QB 546; *Jones v Jones* (1862) 1 H & C 1.

9 For these purposes, any reference to an entry upon any servient land includes a reference to the doing on that land of anything necessary for carrying out the works to the dominant land which are reasonably necessary for its preservation; and the Access to Neighbouring Land Act 1992 applies in relation to any obstruction of, or other interference with, a right over, or interest in, any land as it applies in relation to an entry upon that land; and 'enter' and 'entry' are to be construed accordingly: s 8(1), (2).

10 'Land' does not include a highway: Access to Neighbouring Land Act 1992 s 8(3).

11 Access to Neighbouring Land Act 1992 ss 1(1), 8(3). Applications must be commenced in a county court: High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 6A (added by the Access to Neighbouring Land Act 1992 s 7(2)). As to the terms and conditions of access orders, their effect, the persons bound, registration of access orders and of applications for such orders, variation of such orders and damages for breach see the Access to Neighbouring Land Act 1992 ss 2-6; and **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARAS 112-120. As to the procedure applicable to claims under the Access to Neighbouring Land Act 1992 see CPR 56.4; *Practice Direction--Landlord and Tenant Claims and Miscellaneous Provisions about Land* PD 56 para 11.

12 Access to Neighbouring Land Act 1992 s 1(2). The court may not, however, make an access order in any case where it is satisfied that, were it to make such an order, the respondent or any other person would suffer interference with, or disturbance of, his use or enjoyment of the servient land, or the respondent, or any other person (whether of full age or capacity or not) in occupation of the whole or any part of the servient land, would suffer hardship, to such a degree by reason of the entry, notwithstanding any requirement of the Access to Neighbouring Land Act 1992 or any term or condition that may be imposed under it, that it would be unreasonable to make the order: s 1(3).

13 See the Access to Neighbouring Land Act 1992 s 1(4).

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(2) ABATEMENT/(i) Abatement by Individuals/219. Who may abate a nuisance.

219. Who may abate a nuisance.

The right to abate a nuisance exists in any person, including a lessee, whose rights or whose property are injured by the nuisance[1].

1 *Penruddock's Case* (1598) 5 Co Rep 100b. As to the right of a commoner to abate a nuisance on a common see **COMMONS** vol 13 (2009) PARA 566.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(2) ABATEMENT/(i) Abatement by Individuals/220. Extent of right to abate public nuisances.

220. Extent of right to abate public nuisances.

In abating a public nuisance, a private individual may only interfere with it so far as it causes special injury to him and so far as may be necessary to enable him to exercise his public rights[1]. He is not justified in doing damage to the property of the person creating the nuisance if he is able to exercise his rights with reasonable convenience and without doing such damage[2].

1 *Colchester Corpn v Brooke* (1846) 7 QB 339; *Dimes v Petley* (1850) 15 QB 276; *Batemen v Bluck* (1852) 18 QB 870; *Bagshaw v Buxton Local Board of Health* (1875) 1 ChD 220 at 224; cf *R v Richmond, Surrey Justices* (1860) 24 JP 422, CCR. See also **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 339.

2 See the cases cited in note 1.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(2) ABATEMENT/(i) Abatement by Individuals/221. Extent of right to abate private nuisances.

221. Extent of right to abate private nuisances.

The person injured by a private nuisance may justify its abatement and the entry on his neighbour's land for that purpose[1], provided that the abatement is not effected in circumstances specially calculated to lead to a breach of the peace[2]; that no more than the offending portion is removed[3]; that no unnecessary damage is done[4]; that, where there are two ways of abating the nuisance, the less mischievous is followed, unless it would inflict some wrong on an innocent third person or the public[5]; and that previous notice is given when possible or necessary[6]. A person seeking to abate must act without undue delay or his justification for resorting to self-redress will be lost[7].

1 *Raikes v Townsend* (1804) 2 Smith KB 9; 1 Hawk PC c 75 s 12. See also the cases cited in PARA 218 notes 2-3.

2 *Perry v Fitzhowe* (1846) 8 QB 757, where abatement was held not to be justified while the plaintiff and his family were in the house during its demolition; and see the comment on this case in *Burling v Read* (1850) 11 QB 904. Cf *Davies v Williams* (1851) 16 QB 546, the difference being that in this last case notice had been previously given and the occupier refused to remove the offending structure.

3 *Cooper v Marshall* (1757) 1 Burr 259; *Greenslade v Halliday* (1830) 6 Bing 379, where the defendant was held not to be justified in removing a board which the plaintiff had fastened to stakes in order to divert a stream for irrigation purposes, although the defendant might have justified the removal of the stakes only.

4 *Colchester Corpn v Brooke* (1846) 7 QB 339; *Perry v Fitzhowe* (1846) 8 QB 757; *Dimes v Petley* (1850) 15 QB 276; and cf *R v Richmond, Surrey Justices* (1860) 24 JP 422.

5 See *Roberts v Rose* (1865) LR 1 Exch 82; and *Lagan Navigation Co v Lambeg Bleaching, Dyeing and Finishing Co Ltd* [1927] AC 226, HL.

6 See PARA 218.

7 See *Burton v Winters* [1993] 3 All ER 847 at 852, [1993] 1 WLR 1077 at 1081-1082, CA, per Lloyd LJ.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(2) ABATEMENT/(i) Abatement by Individuals/222. Effect of refusal of injunction.

222. Effect of refusal of injunction.

If the claimant applies unsuccessfully for a mandatory injunction he cannot thereafter resort to abatement[1].

1 See *Burton v Winters* [1993] 3 All ER 847, [1993] 1 WLR 1077, CA, where abatement was held to be unavailable after the plaintiff's application for a mandatory injunction to remove a neighbour's encroaching wall had failed; cf *Lane v Capsey* [1891] 3 Ch 411 at 416 per Chitty J. As to mandatory injunctions see **CIVIL PROCEDURE** vol 11 (2009) PARA 417.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(2) ABATEMENT/(ii) Abatement by Local Authorities/A. IN GENERAL/223. Rights at common law and by statute.

(ii) Abatement by Local Authorities

A. IN GENERAL

223. Rights at common law and by statute.

So far as their own property is concerned, local authorities have the same right to abate nuisances in respect of it and its enjoyment as is possessed by private individuals[1]. Power is given by statute to many local authorities to take steps for the abatement of nuisances[2].

1 See PARAS 214-222.

2 See eg the Environmental Protection Act 1990 ss 79-82; and PARAS 115, 225-226. See also **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 340 et seq.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(2) ABATEMENT/(ii) Abatement by Local Authorities/A. IN GENERAL/224. Restrictions on the exercise of rights.

224. Restrictions on the exercise of rights.

In the exercise of the common law right of abatement, local authorities are in the same position as private individuals[1].

Statutes which confer a right of abatement in special circumstances sometimes impose restrictions upon its exercise by defining the period when it may be exercised, as in the case of lopping trees overhanging a highway[2], or by requiring previous notice from the authority and, in some cases, imposing the condition of previous default in obeying an order of a justice or justices[3].

1 See PARAS 214-222.

2 See eg the Highways Act 1980 s 136(4); and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 347.

3 See eg the Environmental Protection Act 1990 ss 79-82, especially s 81(3); and PARAS 115, 225-226.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(2) ABATEMENT/(ii) Abatement by Local Authorities/B. ABATEMENT UNDER THE ENVIRONMENTAL PROTECTION ACT 1990/225. Local authority inspections, investigations and powers of entry.

B. ABATEMENT UNDER THE ENVIRONMENTAL PROTECTION ACT 1990

225. Local authority inspections, investigations and powers of entry.

Every local authority[1] has a duty to cause its area to be inspected from time to time to detect any statutory nuisances[2] and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint[3].

Any person authorised by a local authority has power to enter any premises[4] at any reasonable time for the purpose of ascertaining whether or not a statutory nuisance exists or for the purpose of taking any action or executing any work to remedy the nuisance[5]. Similar provisions apply to action taken in relation to a statutory nuisance caused by noise emitted from or caused by a vehicle, machinery or equipment[6].

If the Secretary of State is satisfied that any local authority has failed, in any respect, to discharge its functions, he may make an order declaring the authority to be in default[7].

Where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority must serve an abatement notice requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence or requiring the execution of specified works[8].

1 As to the meaning of 'local authority' see PARA 155 note 5.

2 As to matters that constitute statutory nuisances see PARA 156.

3 Environmental Protection Act 1990 s 79(1) (amended by the Noise and Statutory Nuisance Act 1993 s 2(1), (2)(c)).

4 As to the meaning of 'premises' see PARA 160.

5 See the Environmental Protection Act 1990 Sch 3 para 2; and PARA 206.

6 See the Environmental Protection Act 1990 Sch 3 para 2A; and PARA 206.

7 See the Environmental Protection Act 1990 Sch 3 para 4(2); and PARA 200.

8 See the Environmental Protection Act 1990 s 80(1); and PARA 200.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(2) ABATEMENT/(iii) Summary Proceedings for Abatement/226. Summary proceedings by person aggrieved.

(iii) Summary Proceedings for Abatement

226. Summary proceedings by person aggrieved.

A magistrates' court may act on a complaint made by any person on the ground that he is aggrieved by the existence of a statutory nuisance[1]. If the magistrates' court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises[2] or, in the case of a nuisance in respect of noise in the street[3], in the same street, the court must make an order for either or both of the following purposes: (1) requiring the defendant to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose; (2) prohibiting a recurrence of the nuisance, and requiring the defendant, within a time specified in the order, to execute any works necessary to prevent the recurrence[4].

1 See the Environmental Protection Act 1990 s 82(1); and PARA 210. As to matters that constitute statutory nuisances see PARA 156.

2 As to the meaning of 'premises' see PARA 160.

3 See PARA 165.

4 See the Environmental Protection Act 1990 s 82(2); and PARA 211. See further PARAS 210-212.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(3) DAMAGES/227. Measure of damages.

(3) DAMAGES

227. Measure of damages.

The damages in an action for nuisance should be such as to compensate for whatever loss results to the claimant as a foreseeable consequence of the wrongful act[1].

Where nuisance causes damage to property the general rule is that the measure of damages is the difference between the money value of the claimant's interest in the property before the damage and the money value of his interest after the damage; and this is not necessarily the same as the cost of repair or replacement[2]. Loss of profits or other expense consequential on the wrongful act is also recoverable[3].

The essence of an award of damages for private nuisance, however, is loss of the amenity value of the land affected[4]. Damages for personal injury as such are therefore not recoverable in this tort, and the sums awarded in personal injury actions will not normally provide an appropriate analogy for the assessment of damages in private nuisance cases[5]. Under the current state of the law, however, damages are still recoverable in public nuisance[6].

1 *Overseas Tankship (UK) Ltd v Miller Steamship Co Pty, The Wagon Mound (No 2)* [1967] 1 AC 617, [1966] 2 All ER 709, PC; *Cambridge Water Co Ltd v Eastern Counties Leather plc* [1994] 2 AC 264 at 300, [1994] 1 All ER 53 at 72, HL, per Lord Goff of Chievely. See also **DAMAGES** vol 12(1) (Reissue) PARAS 851-852.

2 *Moss v Christchurch RDC* [1925] 2 KB 750; *CR Taylor (Wholesale) Ltd v Hepworths Ltd* [1977] 2 All ER 784, [1977] 1 WLR 659, where the plaintiff was not entitled to recover the cost of reinstating his destroyed billiard hall which he did not intend to use for that purpose again; the basis of assessment was the reduced value of his premises. In *Dodd Properties (Kent) Ltd v Canterbury City Council* [1980] 1 All ER 928, [1980] 1 WLR 433, CA, where vibrations damaged the plaintiff's premises in 1968 and the plaintiff had not repaired them in 1979 at the date of trial, he was entitled to compensation based on the cost of repairs in 1979 because in view of the defendant's denial of liability and the financial stringency in which it would have placed the plaintiff had he repaired earlier it was reasonable for him not to have undertaken the repairs before 1979. Cf *Bunclark v Hertfordshire County Council* [1977] 2 EGLR 114. See also *Dominion Mosaics and Tile Co Ltd v Trafalgar Trucking Co Ltd* [1990] 2 All ER 246, CA (cost of acquiring replacement business premises awarded).

3 See *Hunter v Canary Wharf Ltd* [1997] AC 655 at 706, [1997] 2 All ER 426 at 451-452, HL, per Lord Hoffman. See also *Fritz v Hobson* (1880) 14 ChD 542 (loss of custom); *Grosvenor Hotel Co v Hamilton* [1894] 2 QB 836 at 840, CA, per Lindley LJ (cost of moving elsewhere). Where a hotel owner complained of loss of custom through building operations, the Court of Appeal reversed an award of damages to the full extent of the loss of custom, holding that a certain amount of the interference was reasonable, and might have led to a loss of custom; the court assessed what proportion of the loss was attributable to that excess of noise and dust which was actionable: *Andreae v Selfridge & Co Ltd* [1938] Ch 1, [1937] 3 All ER 255, CA.

4 See *Hunter v Canary Wharf Ltd* [1997] AC 655 at 691-692, [1997] 2 All ER 426 at 438, HL, per Lord Goff of Chieveley, at 696 and 442 per Lord Lloyd of Berwick, and at 706 and 451-452 per Lord Hoffman.

5 See *Hunter v Canary Wharf Ltd* [1997] AC 655 at 705-707, [1997] 2 All ER 426 at 451-453, HL, per Lord Hoffman, disapproving observations in *Bone v Seale* [1975] 1 All ER 787, [1975] 1 WLR 797, CA.

6 *Corby Group Litigation v Corby Borough Council* [2008] EWCA Civ 463, [2009] QB 335, sub nom *Re Corby Group Litigation* [2009] 4 All ER 44.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(3) DAMAGES/228. Damages for reversioner.

228. Damages for reversioner.

Where a reversioner sues in respect of a nuisance, the damages awarded should be the amount by which the value of the reversion is lessened by the injury[1]. However, loss of rent due

to the existence of prejudice against the neighbourhood arising from fear of a recurrence of the nuisance cannot be recovered, nor can compensation for the diminution which a temporary nuisance may cause in the present selling value[2].

1 *Hosking v Phillips* (1848) 3 Exch 168. This is not so in cases where the nuisance is a continuing nuisance in respect of which subsequent actions may be brought: see *Battishill v Reed* (1856) 18 CB 696; and PARA 229.

2 *Rust v Victoria Graving Dock Co and London and St Katharine Dock Co* (1887) 36 ChD 113, CA; *Marquis of Granby v Bakewell UDC* (1923) 87 JP 105.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(3) DAMAGES/229. Continuing nuisances.

229. Continuing nuisances.

In nuisance, where there is only a single cause of action, damages resulting from the nuisance must be recovered in one action once and for all[1]. If the claimant fails to secure recovery for all his damage in one action he may not bring another action to repair the omission.

To continue a nuisance may amount to a commission of a further tort of nuisance; this is called a continuing nuisance[2]. Damages for a continuing nuisance will be awarded only in respect of loss which has accrued up to the time of assessment[3]. In such cases there is a new nuisance each day[4] and the cause of action continues from day to day[5]. The recovery of damages for the creation of the nuisance does not amount to a grant of a licence to continue it, and subsequent actions may be brought for the continuance, and substantial damages may be awarded in them[6].

However, where a court exercises its statutory power to award damages in lieu of an injunction[7] for a continuing nuisance the award of damages may take account of future as well as past damages[8].

1 *Clegg v Dearden* (1848) 12 QB 576; *Earl of Harrington v Derby Corpn* [1905] 1 Ch 205; and see **DAMAGES** vol 12(1) (Reissue) PARA 833.

2 *Maberley v Henry W Peabody & Co of London Ltd, Rowland Smith Motors Ltd and Rowland Smith* [1946] 2 All ER 192 at 194 per Stable J.

3 See *Battishill v Reed* (1856) 18 CB 696, where it was decided that damages for a continuing nuisance could be claimed only until the date of the issue of the writ. In that case the defendant's eaves and gutter overhung the plaintiff's wall, and it was held that the plaintiff could not recover the diminution in value of his land but only compensation for the loss sustained up to the issue of the writ.

4 *Roswell v Prior* (1701) 12 Mod Rep 635.

5 *Hole v Chard Union* [1894] 1 Ch 293, CA.

6 *Shadwell v Hutchinson* (1831) 2 B & Ad 97; *Battishill v Reed* (1856) 18 CB 696; and see **DAMAGES** vol 12(1) (Reissue) PARA 834. In *Masters v Brent London Borough Council* [1978] QB 841, [1978] 2 All ER 664, it was decided that where there is a continuing nuisance the person in possession who spends money in repairing the damage may recover the money spent even though some of the damage occurred before he entered into possession.

7 See **CIVIL PROCEDURE** vol 11 (2009) PARA 364 et seq.

8 *Leeds Industrial Co-operative Society Ltd v Slack* [1924] AC 851, HL; and see *Bracewell v Appleby* [1975] Ch 408, [1975] 1 All ER 993; *Jaggard v Sawyer* [1995] 2 All ER 189, [1995] 1 WLR 269, CA.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(4) INJUNCTIONS/230. General principles; grounds for refusal.

(4) INJUNCTIONS

230. General principles; grounds for refusal.

The principles upon which the court acts in granting or refusing injunctions generally apply to injunctions claimed in respect of nuisance[1].

As a rule an injunction to restrain the continuance of an alleged nuisance will not be granted if (1) the injury caused by the nuisance is trivial or not serious, is one which is capable of being estimated in money and can be adequately compensated by a small money payment; and (2) the case is one in which it would be oppressive to the defendant to grant an injunction. In such cases damages will be given in substitution for an injunction[2]. An injunction will not be granted when the injury is of a temporary or occasional character[3]. An injunction may be refused to a claimant who has suffered hardship if it is in the public interest to continue the nuisance[4].

1 See **CIVIL PROCEDURE** vol 11 (2009) PARA 356 et seq. There is no distinction between the principles upon which the court acts in the case of private and public nuisances: *A-G v Sheffield Gas Consumers Co* (1853) 3 De GM & G 304 at 320.

2 *Haines v Taylor* (1846) 10 Beav 75; *Wood v Sutcliffe* (1851) 2 Sim NS 163; *A-G v Sheffield Gas Consumers Co* (1853) 3 De GM & G 304; *Wandsworth Board of Works v London and South Western Rly Co* (1862) 31 LJ Ch 854; *A-G v Cambridge Consumers Gas Co* (1868) 4 Ch App 71; *Shelfer v City of London Electric Lighting Co, Meux's Brewery Co v City of London Electric Lighting Co* [1895] 1 Ch 287 at 322-323, CA, per AL Smith LJ (applied in *Maberley v Henry W Peabody & Co of London Ltd, Rowland Smith Motors Ltd and Rowland Smith* [1946] 2 All ER 192); *Llandudno UDC v Woods* [1899] 2 Ch 705; *Sampson v Hodson-Pressinger* [1981] 3 All ER 710, 12 HLR 40, CA; *Jaggard v Sawyer* [1995] 2 All ER 189, [1995] 1 WLR 269, CA. Cf *Elliott v Islington London Borough Council* [1991] 1 EGLR 167, [1991] 10 EG 145, CA. See also *Watson v Croft Promo-Sport Ltd* [2009] EWCA Civ 15, [2009] 3 All ER 249, [2009] 18 EG 86.

3 *Swaine v Great Northern Rly Co* (1864) 4 De GJ & Sm 211; *Cooke v Forbes* (1867) LR 5 Eq 166, where an injunction was refused in respect of the escape of noxious fumes where the escape was shown to be accidental and to have happened on two or three occasions only, and the defendants had taken careful precautions toward preventing it; *A-G v Preston Corpn* (1896) 13 TLR 14. See PARAS 123, 126-127.

4 See *Miller v Jackson* [1977] QB 966, [1977] 3 All ER 338, CA (playing of cricket at a cricket club was held to be in the public interest even though some danger to nearby houses was inevitable; an injunction was refused, and damages were awarded). See also *Dennis v Ministry of Defence* [2003] EWHC 793 (QB), [2003] 2 EGLR 121, [2003] NLJR 634 (low flying military aircraft). Cf *Kennaway v Thompson* [1981] QB 88, [1980] 3 All ER 329, CA.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(4) INJUNCTIONS/231. Grounds for the grant of an injunction.

231. Grounds for the grant of an injunction.

As a rule, and subject to legal and equitable defences[1], an injunction will be granted to restrain the continuance of a nuisance where the injury done by it is substantial[2], or where, however slight the damage may be, the nuisance is a continuing or recurring one, so that it would give rise to a series of actions if no injunction were granted[3], or where the defendant claims the right to continue the conduct complained of[4], or threatens to do so[5]. The conduct of the defendant may be a material factor in deciding whether the violation of a right should be remedied by damages or prevented by an injunction[6].

1 See generally **CIVIL PROCEDURE** vol 11 (2009) PARA 356 et seq.

2 *A-G v Nichol* (1809) 16 Ves 338; *Soltau v De Held* (1851) 2 Sim NS 133; *A-G v Sheffield Gas Consumers Co* (1853) 3 De GM & G 304; *Wilson v Townend* (1860) 1 Drew & Sm 324; *Curriers' Co v Corbett* (1865) 4 De GJ & Sm 764; *Beadel v Perry* (1868) 19 LT 760; *Grand Junction Canal Co v Shugar* (1871) 6 Ch App 483; *Thorpe v Brumfitt* (1873) 8 Ch App 650; *Lambton v Mellish, Lambton v Cox* [1894] 3 Ch 163. Injunctions have also been granted in respect of noise or vibration caused by go-kart racing (*Tetley v Chitty* [1986] 1 All ER 663); factories in a manufacturing town (*White v Cohen* (1852) 1 Drew 312; *Crump v Lambert* (1867) LR 3 Eq 409; *Gaunt v Fynney* (1872) 8 Ch App 8; *Manser v Bowers* [1872] WN 163; *Baxter v Bower* (1875) 44 LJ Ch 625; *Heather v Pardon* (1877) 37 LT 393; *Rushmer v Polsue and Alfieri Ltd* [1906] 1 Ch 234, CA (affd sub nom *Polsue and Alfieri Ltd v Rushmer* [1907] AC 121, HL)); steam-saws (*Viscountess Gort v Clark* (1868) 16 WR 569; *Husey v Bailey* (1895) 11 TLR 221; *Gilling v Gray* (1910) 27 TLR 39); steam-hammers (*Roskell v Whitworth* (1871) 19 WR 804; *Goose v Bedford* (1873) 21 WR 449); mortar-mills (*Fenwick v East London Rly Co* (1875) LR 20 Eq 544; *Sander v Manley and Rogers* [1878] WN 181); electric generating stations (*Colwell v St Pancras Borough Council* [1904] 1 Ch 707; *Knight v Isle of Wight Electric Light and Power Co* (1904) 73 LJ Ch 299; *Dexter v Aldershot UDC* (1915) 79 JP Jo 580); gas engines (*M'Ewen v Steedman and M'Alister* 1912 SC 156); fêtes and disorderly people attending them (*Bostock v North Staffordshire Rly Co* (1852) 5 De G & Sm 584; *Walker v Brewster* (1867) LR 5 Eq 25); roundabouts and steam organs (*Inchbald v Robinson, Inchbald v Barrington* (1869) 4 Ch App 388; *Winter v Baker* (1887) 3 TLR 569; *Phillips v Thomas* (1890) 62 LT 793; *Becker v Earl's Court Ltd* (1911) 56 Sol Jo 73; *Bedford v Leeds Corpn* (1913) 77 JP 430); stabling horses close to dwelling houses (*Ball v Ray* (1873) 8 Ch App 467; *Broder v Saillard* (1876) 2 ChD 692); blacksmiths' forges (*Bradley v Gill* (1688) 1 Lut 69; *Gullick v Tremlett* (1872) 20 WR 358); church bells (*Martin v Nutkin* (1724) 2 P Wms 266); an open rifle range (*Hawley v Steele* (1877) 6 ChD 521); rifle galleries (*Winter v Baker* above); the use of a pestle and mortar in a confectioner's business (*Sturges v Bridgman* (1879) 11 ChD 852, CA); a dairy business (*Tinkler v Aylesbury Dairy Co Ltd* (1888) 5 TLR 52); dancing above business premises (*Jenkins v Jackson* (1888) 40 ChD 71); noisy crowds outside a proprietary club (*Bellamy v Wells* (1890) 60 LJ Ch 156); an exhibition (*Germaine v London Exhibitions Ltd* (1896) 75 LT 101); attendance at race meetings (*Dewar v City and Suburban Racecourse Co* [1899] 1 IR 345); singing lessons (*Motion v Mills* (1897) 13 TLR 427); a skittles and bowls alley (*Barham v Hodges* [1876] WN 234); cattle at a railway goods station (*London, Brighton and South Coast Rly Co v Truman* (1885) 11 App Cas 45, HL); the manufacture of aeroplane engines (*Bosworth-Smith v Gwynnes Ltd* (1919) 89 LJ Ch 368); and noise from a hotel kitchen (*Vanderpant v Mayfair Hotel Co Ltd* [1930] 1 Ch 138). An interlocutory injunction has been granted to prevent operation of a sex shop in a residential area (*Laws v Florinplace* [1981] 1 All ER 659). As to nuisance caused by a Salvation Army band see *Anon* (1913) 77 JP Jo 256. For a form of injunction see *Pemberton v Bright* [1960] 1 All ER 792 at 799, [1960] 1 WLR 436 at 446-447, CA, per Upjohn LJ.

3 *A-G v Sheffield Gas Consumers Co* (1853) 3 De GM & G 304; *A-G v Birmingham Borough Council* (1858) 4 K & J 528 at 540; *Clowes v Staffordshire Potteries Waterworks Co* (1872) 8 Ch App 125 at 142; and see *A-G v Lewes Corpn* [1911] 2 Ch 495; *Wood v Conway Corpn* [1914] 2 Ch 47, CA (injury to trees by fumes from gasworks); *Stollmeyer v Petroleum Development Co Ltd* [1918] AC 498n, PC; *Morrow v Stepney Corpn* (1920) 18 LGR 458; *Maberley v Henry W Peabody & Co of London Ltd, Rowland Smith Motors Ltd and Rowland Smith* [1946] 2 All ER 192 (debris piled against wall); *McCombe v Read* [1955] 2 QB 429, [1955] 2 All ER 458 (injury to building by tree roots). See also *City of London Corpn v Bovis Construction Ltd* [1992] 3 All ER 697, 49 BLR 1, CA (repeated contravention of notice served under the Control of Pollution Act 1974 s 60; remedy in criminal law inadequate; interlocutory injunction granted); but note that (1) the invoking of civil law to aid criminal law should be exceptional; (2) there should be something more than mere infringement of the criminal law; and (3) the foundation for the exercise of the discretion to grant an injunction is the need to draw the inference that the unlawful operations will continue and that nothing short of an injunction will be effective to restrain them: see *City of London Corpn v Bovis Construction Ltd* at 714 and at 27 per Bingham LJ.

4 *Roberts v Gwyrfai District Council* [1899] 1 Ch 583 (affd [1899] 2 Ch 608, CA); *A-G v Preston Corpn* (1896) 13 TLR 14; *A-G v Acton Local Board* (1882) 22 ChD 221; *Swindon Waterworks Co v Wilts and Berks Canal Navigation Co* (1875) LR 7 HL 697; *Wallace v M'Cartan* [1917] 1 IR 377.

5 *Potts v Levy* (1854) 2 Drew 272. See also *North Eastern Rly Co v Crossland* (1862) 2 John & H 565.

6 *A-G v Nichol* (1809) 16 Ves 338 at 342; *Colls v Home and Colonial Stores Ltd* [1904] AC 179 at 193, HL; *Price v Hilditch* [1930] 1 Ch 500 at 504; *A-G (on the relation of Glamorgan County Council and Pontardawe RDC) v PYA Quarries Ltd* [1957] 2 QB 169 at 189, [1957] 1 All ER 894 at 907, CA, per Romer LJ; *Tetley v Chitty* [1986] 1 All ER 663 at 675 per McNeill J. For a form of injunction see *Colls v Home and Colonial Stores Ltd* above at 194; *Anderson v Francis* [1906] WN 160.

232. Effect of claim of right.

Where the right to do the act complained of is claimed and an undertaking is refused, the inference will be drawn that a repetition of the nuisance is intended, and an injunction may be granted[1]. An injunction will not be granted where the defendant asserts his right to do the act but states that he has no immediate intention of doing it, and undertakes to give reasonable notice before attempting to do it[2].

1 *Phillips v Thomas* (1890) 62 LT 793.

2 *Lord Cowley v Byas* (1877) 5 ChD 944, CA.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(4) INJUNCTIONS/233. Prospective or threatened nuisance.

233. Prospective or threatened nuisance.

An injunction may be granted to restrain the commission of a prospective nuisance[1]. To obtain such an injunction it is necessary to show that the apprehended mischief will probably arise[2]. The degree of probability required for the grant of an injunction is not an absolute standard; what has to be aimed at is justice between the parties, having regard to all the relevant circumstances[3]. If imminent danger of a substantial kind is shown, or should it appear that the apprehended danger, if it comes, will be irreparable, an injunction may be granted[4].

1 See the cases cited in notes 2-4; and PARA 234 note 2. See also *Dawson v Paver* (1847) 5 Hare 415; *Elwell v Crowther* (1862) 31 Beav 163; *A-G v Kingston-on-Thames Corpn* (1865) 34 LJ Ch 481; *Litchfield-Speer v Queen Anne's Gate Syndicate (No 2) Ltd* [1919] 1 Ch 407 (threatened obstruction of ancient lights); *King v Taylor* (1976) 238 Estates Gazette 265, where an injunction was granted when tree roots threatened the stability of the plaintiff's bungalow. As to injunctions granted to restrain threatened injury see generally **CIVIL PROCEDURE** vol 11 (2009) PARA 362.

2 *A-G v Manchester Corpn* [1893] 2 Ch 87.

3 *Hooper v Rogers* [1975] Ch 43, [1974] 3 All ER 417, CA.

4 *Fletcher v Bealey* (1885) 28 ChD 688; *Haines v Taylor* (1846) 10 Beav 75; *Earl of Ripon v Hobart* (1834) 3 My & K 169. An injunction to restrain the erection of a hospital for infectious diseases will only be granted when there is real danger to health or property: see *Metropolitan Asylum District Managers v Hill* (1881) 6 App Cas 193, HL; *Bendelow v Wortley Union Guardians* (1887) 57 LJ Ch 762 (injunction granted on the ground that there was appreciable injury to plaintiff's property); *Fleet v Metropolitan Asylums District Managers* (1884) 1 TLR 80 (affd (1886) 2 TLR 361, CA) (injunction refused on failure to show danger to health or property); *A-G v Nottingham Corpn* [1904] 1 Ch 673; *A-G v Manchester Corpn* [1893] 2 Ch 87; *A-G v Rathmines and Pembroke Hospital Board* [1904] 1 IR 161, Ir CA. In view of scientific knowledge about infectious diseases, the establishment of such hospitals will not be assumed to be a serious source of danger, at any rate for the granting of an injunction in a quia timet action: *A-G v Nottingham Corpn* above; *A-G v Manchester Corpn* above. As to relief in the nature of a quia timet action see **CIVIL PROCEDURE** vol 11 (2009) PARAS 362, 365, 367; **EQUITY** vol 16(2) (Reissue) PARA 484.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(4) INJUNCTIONS/234. Evidence necessary.

234. Evidence necessary.

Where an injunction is sought it is not sufficient merely to allege that the proposed act of the defendant will have an illegal result as against the claimant without putting before the court sufficient material to enable it to judge of that question for itself[1]. Where some degree of present nuisance exists, the court will take into account its probable continuance and increase, and its present existence raises a presumption of its continuance[2]. As between adjoining owners the court will consider whether the defendant is using his property reasonably or not[3].

1 *Haines v Taylor* (1847) 2 Ph 209.

2 *Goldsmid v Tunbridge Wells Improvement Comrs* (1866) 1 Ch App 349; *Phillips v Thomas* (1890) 62 LT 793.

3 *Sanders-Clark v Grosvenor Mansions Co Ltd and D'Allessandri* [1900] 2 Ch 373; and see PARA 116 et seq; and the cases cited in PARA 231 note 2.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(4) INJUNCTIONS/235. Effect of claimant's motive and conduct.

235. Effect of claimant's motive and conduct.

Although the motive with which an act alleged to be a nuisance is done does not alter its character[1], the motive which actuates the person who brings the proceedings to restrain acts alleged to be a nuisance is to be considered in determining whether an injunction should be granted[2]. Acquiescence of the claimant which encourages the defendant to expend money will deprive the former of the remedy of an injunction and will reduce him to his remedy, if any, in damages[3]; but acquiescence in a nuisance which causes little injury does not warrant an extension causing great injury[4].

1 See PARA 111. As to motive see *Harrison v Southwark and Vauxhall Water Co* [1891] 2 Ch 409 at 414; *Christie v Davey* [1893] 1 Ch 316 at 328.

2 *A-G v Cambridge Consumers Gas Co* (1868) 4 Ch App 71 at 83-84 per Page Wood LJ, quoting *A-G v Sheffield Gas Consumers Co* (1853) 3 De GM & G 304 at 311 per Knight Bruce LJ.

3 *Williams v Earl of Jersey* (1841) Cr & Ph 91.

4 *Bankart v Houghton* (1860) 27 Beav 425; and see **CIVIL PROCEDURE** vol 11 (2009) PARA 373.

Halsbury's Laws of England/NUISANCE (VOLUME 78 (2010) 5TH EDITION)/3. REMEDIES/(4) INJUNCTIONS/236. Effect of nuisance ceasing after action begun.

236. Effect of nuisance ceasing after action begun.

The court may refuse to grant an injunction to restrain obstruction of the right of access to premises, when the nuisance existed at the time of action brought but has since ceased owing to the intervention of the police[1]. A declaration that the defendant is not entitled to commit the act complained of is sometimes made instead of granting an injunction[2]; but, where damage to property has been proved, the rule appears to be that the claimant may be entitled to an injunction notwithstanding that the defendants have terminated the commission of the nuisance after the beginning of the action[3].

1 *Barber v Penley* [1893] 2 Ch 447 (crowds attending a theatre).

2 *Batcheller v Tunbridge Wells Gas Co* (1901) 84 LT 765.

3 *Dean and Chapter of Chester v Smelting Corpn Ltd* (1901) 85 LT 67, where the company had, since action, gone into liquidation; *A-G (on the relation of Glamorgan County Council and Pontardawe RDC) v PYA Quarries Ltd* [1957] 2 QB 169 at 188-189, [1957] 1 All ER 894 at 906-907, CA, per Romer LJ; and see **CIVIL PROCEDURE** vol 11 (2009) PARA 359.